

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16**

**COGNIZANT TECHNOLOGY SOLUTIONS U.S.
CORPORATION, GOOGLE, LLC/ALPHABET, INC.**

Employer,

-and-

**ALPHABET WORKERS UNION-COMMUNICATION
WORKERS OF AMERICA, LOCAL 1400,**

Petitioner.

Case No. 16-RC-305751

**POST-HEARING BRIEF BY RESPONDENT
COGNIZANT TECHNOLOGY SOLUTIONS U.S. CORPORATION**

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I. INTRODUCTION

The Union asks the Regional Director to find that Cognizant Technology Solutions U.S. Corporation jointly employs the petitioned-for unit of workers with Google (one of the thousands of clients for whom Cognizant provides services). But the Union has failed to carry its burden to show that Cognizant and Google are joint employers under current law. As to each and every one of the areas that the Board examines to determine joint employer status, the evidence overwhelmingly shows that Cognizant alone is the employer of the workers at issue:

- **Hiring** – Cognizant handles all aspects of the hiring process. This was established not only by Cognizant’s witnesses, but also the Union’s witnesses, who testified that they were hired by Cognizant after they responded to job postings by Cognizant, submitted applications to Cognizant, and were interviewed by Cognizant personnel. *See generally*, Hearing Transcript (Tr.) 222:12-224:9, 353:17-18, 464:14-21.¹ Google plays no role in any of that.
- **Wages** – Cognizant alone sets the wages for the Cognizant employees in the petitioned-for unit. Indeed, Cognizant has set their pay higher than the minimum pay Google requests of its vendors. Tr. 104:20-25.
- **Benefits** – Only Cognizant determines, provides, monitors, and administers the benefits available to the bargained-for unit. Tr. 20:18-22. Cognizant alone decides the vendors to use for benefits, the coverage to be provided, and the premiums. Google plays no role in any of that. Tr. 75:24-77:4. As with wages, Google sets minimum standards for certain benefits, but Cognizant’s robust existing benefits

¹ Cited excerpts of the Hearing Transcript are attached as Exhibit A.

already meet nearly all of those requested minimums. Tr. 41:21-24; Employer Ex. 6.

- **Hours of Work** – As described by the Union’s own witnesses, *Cognizant’s employees* are the ones who decided (by a majority vote) their hours of work. To the extent a particular Cognizant employee needs to change their work hours further (either in the short-term, or for the long term), that adjustment is made by their Cognizant manager, Priya Ramani, and the Team Leads, in consultation with Cognizant Human Resources. Tr. 109:20-111:2, 406:15-407:13. Google has no input into any of that.
- **Supervision** – Only Cognizant personnel supervise the petitioned-for unit. Tr. 89:21-90:1. Indeed, the Union’s own witnesses provided direct evidence of this. For example, Union witness Katie Marschner made clear that “Priya is [her] boss” (meaning, Cognizant manager, Priya Ramani). Tr. 183:21-184:2. Only Cognizant employees perform appraisals of the employees’ performance, including crafting performance improvement plans and giving feedback on how to improve. Google is not involved in any of that. Tr. 50:10-51:2, 111:3-18.
- **Direction** – Only Cognizant sets the employees’ work schedules and assigns work to them. Google transmits work tasks to Cognizant by sending them electronically (either via a spreadsheet or internal tool, depending on the work being done). Cognizant employees, including Priya Ramani, the Team Leads and SMEs, then choose “who we want to assign how much or what quantity of task do we want to assign.” Tr. 93:17-18.

- **Discipline** – Priya Ramani, the Team Leads and Cognizant HR are the only ones who conduct discipline. The Union’s own witnesses, Katie Marschner and Jonas Owens, expressly confirmed that. Tr. 38:5-39:7, 227:24-228:7; 327:24-328:13, 415:23-25.
- **Discharge** – Only Cognizant determines when to terminate the employment of an employee in the petitioned-for unit. Tr. 38:5-39:7. Google can ask that a Cognizant employee be moved off a Google assignment, but that does not mean the employee loses their employment. The evidence shows that the employee would then be moved to Cognizant’s “bench” to be placed on another assignment. The examples discussed in the hearing showed that Cognizant employees are fired only if they have violated *Cognizant’s* policies, and *Cognizant* decides to end their employment.²

II. THE PETITIONED-FOR UNIT IS MADE UP OF COGNIZANT EMPLOYEES WHO WORK ON A PROJECT SUPPORTING YOUTUBE MUSIC; THEY ARE BASED IN AUSTIN, TEXAS.

Cognizant Technology Solutions U.S. Corporation is the U.S. arm of a global professional services company. Cognizant employs tens of thousands of employees across North America. It is routinely called on by its clients as a third party vendor to provide digital services and solutions, consulting, application development, systems integration, application testing, application maintenance, infrastructure services and business process services. Cognizant attracts clients from many business verticals, including companies in life sciences, healthcare, products and services, and communications, media and technology. *See* Tr. 78:7-24.

Cognizant has thousands of clients, and often has multiple projects underway for those clients. Tr. 73:5-16. Cognizant employees (called “associates,” in Cognizant’s parlance) can

² Cognizant’s Statement of Position challenged the inclusion of Senior Process Executives (SPEs) in the unit. Cognizant has since withdrawn that challenge, and it advised the Union of that change.

(and do) move between projects and between clients. Tr. 73:17-20. When Cognizant's work on a project ramps down, Cognizant has a dedicated process (called the "deployable bench process") through which it provides associates five fully paid weeks (with full benefits) to find another role on one of the many other projects Cognizant is performing for its range of clients. Tr. 25:14-26:12; 62:17-63:13.

In Austin, Texas, Cognizant employs a team that works on a project supporting YouTube's Music Content Operations ("MCO").³ They have been temporarily working from home since Spring 2020 due to the COVID-19 pandemic. When they return to work in an office, they will work from a Cognizant-owned, Cognizant-operated facility located in Travis County, Texas. The address is 717 E. Parmer Lane, Austin, TX 78753.⁴

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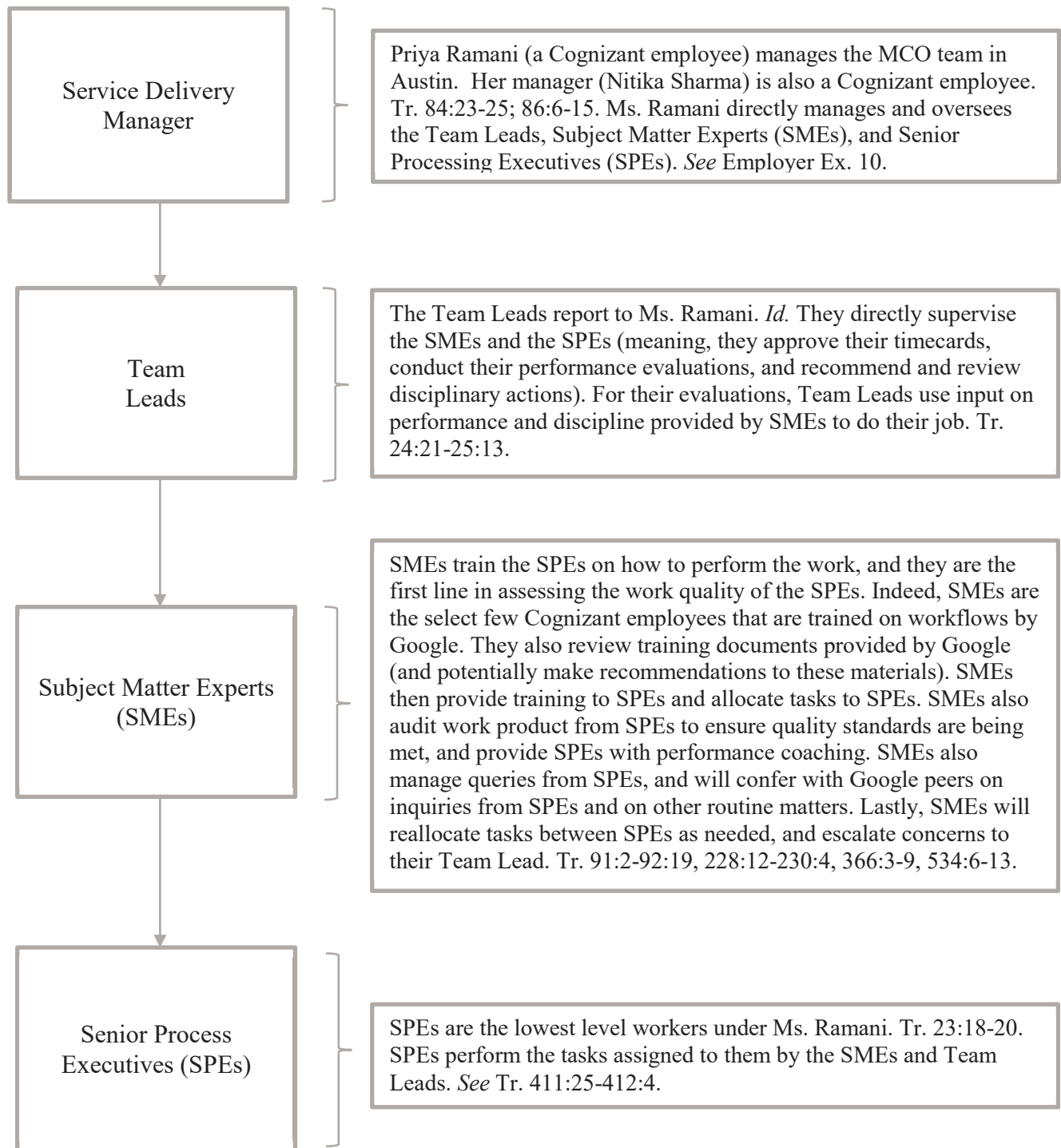
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³ For ease of reference, YouTube is referred to in this brief as "Google."

⁴ Before the pandemic, some of the Cognizant employees at issue worked from a facility in Williamson County, Texas, which is roughly 20 minutes away. The address of that former facility is 7700 W. Parmer Lane, Austin, TX 78729. Tr. 355:5-7. The former facility is a vendor-operated location used by multiple vendors to provide desk space and secure lines to their employees who provide services to Google. *See* Tr. 528:17-529:5.

Cognizant's MCO team is organized as follows:



III. COGNIZANT IS THE SOLE EMPLOYER OF THE PETITIONED-FOR UNIT

Under the Board’s operative rule on joint employer status—29 C.F.R. § 103.40 (the “Board Rule”)—to be a joint employer, the putative joint employer must share or codetermine the employees’ essential terms and conditions of employment such that it exercises “**substantial direct and immediate control over one or more essential terms and conditions of employment**” as would warrant finding that the [alleged joint employer] meaningfully affects matters relating to the employment relationship with those employees.” *Id.* § 103.40(a) (emphasis added). The Board Rule defines “essential terms and conditions of employment” to mean (1) hiring, (2) wages, (3) benefits, (4) hours of work, (5) supervision, (6) direction, (7) discipline, and (8) discharge. 29 C.F.R. § 103.40(b). “The party asserting that an entity is a joint employer has the burden of proof.” 29 C.F.R. § 103.40(a).

Here, the Union claims that Google is a joint employer of the petitioned-for unit. But the Union has failed to meet its burden. As described in detail below, the record—indeed, the testimony of the Union’s very own witnesses—establishes that Google does not exercise “substantial direct and immediate control over” the essential terms and conditions of employment of the petitioned-for unit. To the contrary, the record establishes that Cognizant is their sole employer.

A. The Employees At Issue Were Hired Solely By Cognizant

Hiring. *An entity exercises direct and immediate control over hiring if it actually determines which particular employees will be hired and which employees will not. An entity does not exercise direct and immediate control over hiring by requesting changes in staffing levels to accomplish tasks or by setting minimal hiring standards such as those required by government regulation.*

29 CFR 103.40(c)(2).

Cognizant decides whom it hires. Tr. 27:23-28:9. Cognizant has a full recruiting team of Cognizant employees who manage its entire recruiting process. This Cognizant team works with Cognizant-employed managers to put together job descriptions and posts open positions on Cognizant’s own careers website, LinkedIn, and elsewhere. This Cognizant team sends screened applications to the hiring managers to initiate the interview and selection process. Tr. 27:1-22. Only Cognizant “actually determines which particular employees will be hired and which employees will not.” 29 C.F.R. 103.40(c)(4); Tr. 109:1-9.

Google has no role in Cognizant’s hiring process.⁵ Google does not review resumes, participate in interviews, or have any veto/approval power over Cognizant’s hiring decisions. Tr. 27:23-28:9; 77:5-21; 108:9-25. Indeed, the testimony of the Union’s *own witnesses* established that. For example, when the Union’s counsel asked its witness Katie Marschner about her experience applying to Cognizant, she testified:

- a *Cognizant employee* referred her to Cognizant for a job (Tr. 222:12-224:9);
- a *Cognizant employee* sent her the application; and

⁵ Google’s witnesses – Kevin Babu (the AMER Regional Lead for Global Scaled Operations, who runs Google’s outsourcing engagement and strategy for YouTube), and Jonathan Weinman (who is a Music Operations Specialist at YouTube) – testified that they are not involved in hiring of Cognizant employees and do not know of anyone at Google that is. Tr. 532:7-13; 557:15-25.

- a *Cognizant employee*, Anant Bafna, interviewed her for her position (Tr. 222:12-224:9).

Employment offers are made by Cognizant, on Cognizant letterhead. *See* Employer Ex.

13. Cognizant collects and processes their benefits elections and related personal information. *See* Employer Ex. 21, 22.

In the hearing, the Union questioned Cognizant’s Priya Ramani on recommended ratios for staffing that appear in the original 2015 Statement of Work between Cognizant and Google. *See* Employer Ex. 12. Ms. Ramani testified that those ratios are only that – a recommendation – “because on [the] ground, [Cognizant has] higher levels than that.” Tr. 620:4-621:1. Even *if* Cognizant at some point changed a staffing level to meet one of the recommended staffing ratios (there is no evidence of that), that still would not be dispositive. The Board Rule makes clear that an “entity does not exercise direct and immediate control over hiring by requesting changes in staffing levels to accomplish tasks.” 29 C.F.R. 103.40(c)(4).⁶

⁶ In that same 2015 document, there are Annexures (Nos. 2 and 5) listing “Knowledge Expectations” and “minimum criteria for agents”, which the Union may argue reflect an exercise of control over hiring. *See* Employer Ex. 12; Union Ex. 44. They do not. The Board Rule is clear that an “entity does not exercise direct and immediate control over hiring . . . by setting minimal hiring standards.” 29 C.F.R. 103.40(c)(4). Moreover, the Union made no inquiry in the hearing as to whether those criteria in that 2015 document are even relevant or in effect now (nearly 8 years later). This is one of the many ways in which the Union failed to carry its burden.

B. Cognizant Sets The Employees' Wages

***Wages:** An entity exercises direct and immediate control over wages if it actually determines the wage rates, salary or other rate of pay that is paid to another employer's individual employees or job classifications. An entity does not exercise direct and immediate control over wages by entering into a cost-plus contract (with or without a maximum reimbursable wage rate).*

29 CFR 103.40(c)(1).

Cognizant's business leaders work with Cognizant's Human Resources to set wages and wage levels for Cognizant employees. Tr. 43:22-44:18. Wages are then paid to employees by Cognizant, not by any underlying client for a project, such as Google/YouTube. Tr. 43:11-21, 531:11-14; Employer Ex. 19 (earnings statement for Liana Hernandez from Cognizant Technology Solutions US Corp). The Union offered no evidence to the contrary. In fact, Union's own witness Liana Hernandez confirmed that she has never received a paycheck from Google. Tr. 401:6-11.

In the hearing, the Union focused on the fact Google asks that vendors meet a minimum standard of wages for their own workers who are supporting Google. That amount is \$15/hour. See Union Ex. 1. But the evidence showed that Cognizant has set the wage rates for these employees at levels far higher than that (starting at \$19-20/hour for SPEs, and \$22/hour for SMEs). Tr. 104:20-25. Only Cognizant "*actually* determines the wage rates" that are paid to Cognizant employees, and the union made no showing to the contrary. Tr. 43:22-44:18; 29 C.F.R. 103.40(c)(1) (emphasis added); *TLI*, 271 NLRB 798, 798-799 (1984) (holding that the Board looks to actual practice of parties).

C. Cognizant Determines, Provides, Monitors, and Administers Benefits

Benefits. *An entity exercises direct and immediate control over benefits if it actually determines the fringe benefits to be provided or offered to another employer's employees. This would include selecting the benefit plans (such as health insurance plans and pension plans) and/or level of benefits provided to another employer's employees. An entity does not exercise direct and immediate control over benefits by permitting another employer, under an arm's-length contract, to participate in its benefit plans.*

29 CFR 103.40(c)(2).

Cognizant provides and administers comprehensive benefits to all of its employees—regardless of the client(s) they are servicing at the time. These include:

- health insurance plans (medical, dental and vision),
- life insurance,
- accidental death and dismemberment insurance,
- 401(k) retirement savings plan,
- employee stock purchase plan,
- workers compensation benefits,
- short term disability benefits,
- long term disability benefits,
- COBRA benefits, and
- Green Card sponsorship (when needed).

Employer Ex. 1 (Handbook), 30-33, Ex. 2 (Benefits Information Session), Ex. 3 (Benefits Guide); Tr. 20:18-22. These benefits are in addition to time-off benefits provided to all Cognizant employees, including paid vacation time, paid holidays including one additional floating holiday, paid time off for minor/periodic illnesses, and bereavement leave. Employer Ex.

1, 25-30. These are Cognizant-provided benefits, and *only Cognizant* determines, monitors, and administers these benefits.

Only Cognizant selects the vendors for its benefits plans (e.g., 401K and health plans), and decides the healthcare coverage, premiums, and co-pays, as well as the terms and company match available for its retirement plans. Tr. 75:24-77:4.

Some of Cognizant's clients set minimum standards for certain benefits to be available to vendors' employees when they work on those vendors' projects. Google is such a client. See Union Ex. 1, 1-4. Importantly:

- Only Cognizant decides what the eligibility requirements for benefits (standard or augmented) will be, and only Cognizant assesses and tracks when employees are eligible for benefits. Tr. 75:24-77:4. Google has no say in any of that. *Id.*
- The minimum standard benefits requested by Google are almost entirely available already to Cognizant's Austin associates, independent of Google's standards.⁷ Tr.

⁷ The only exception is the number of paid days provided as parental leave. Cognizant provides fully paid pregnancy disability of eight weeks regardless of delivery and fully paid parental leave of four weeks. Employer Ex. 2, 6. Google asks that vendor employees be provided an additional eight fully paid weeks of parental leave. Employer Ex. 6, 3. This one addition to an already-provided benefit does not rise to "*substantial* direct and immediate control ... as would warrant finding that the entity meaningfully affects matters relating to the employment relationship with those employees." 29 C.F.R. § 103.40(a). Moreover, the Board specifically observed that "direct and immediate control over at least one essential term or condition is necessary, but *the final rule makes clear that it is not necessarily sufficient*" – referencing the "totality of the relevant facts" requirement. 85 F.R. 11205. So here, where just one benefit is being further topped up, imposing bargaining obligations and potential unfair labor practice liability would be contrary to Board law. See cases cited by the Board in the Federal Register on the Board Rule (85 F.R. 11227): *Pitney Bowes, Inc.*, 312 NLRB 386, 387 (1993) (user employer's issuing undocumented verbal warnings and *routine* instructions *did not* meaningfully affect the employment relationship in light of the supplier employer's "nearly complete control over all other significant aspects of the employment relationship"); *Women & Infants Hospital*, 324 NLRB at 749 (*recurring* direction by the user employer necessitated by the lack of a supplier-employer onsite supervisor was not itself enough to warrant a joint-employer finding absent other meaningful evidence).

41:25-42:4. Moreover, it is Cognizant that administers and provides any augmentation of benefits to Cognizant employees – in this situation, only if they are working on the Google account at least 75% of the time. *See* Employer Ex. 6, 1.

With regard to holidays, there was testimony that the petitioned-for employees follow the Google holiday calendar. That is a red herring because the total number of paid holidays the employees enjoy is the same, whether they work on a Google project or not. As Priya Ramani testified: “If a vendor team is following [a] calendar [that] has less number of days[] Cognizant would always compensate that because there are a number of holidays that is given to us as Cognizant employees.” Tr. 151:10-13.

The only Union witness to address this issue in substance was Katie Marschner, but she readily admitted that she is “kind of confused” about holidays at Cognizant, and her testimony provided no basis for finding any material difference in the paid holiday benefit available to Cognizant employees who work on Google projects versus those who do not. Tr. 247:17-23.

D. Cognizant Determines The Work Schedules And Hours of Work

***Hours of work.** An entity exercises direct and immediate control over hours of work if it actually determines work schedules or the work hours, including overtime, of another employer's employees. An entity does not exercise direct and immediate control over hours of work by establishing an enterprise's operating hours or when it needs the services provided by another employer.*

29 CFR 103.40(c)(3).

Cognizant decides the hours of work for its employees. As Union witness Liana Hernandez explained, the workers *at Cognizant* decided – by majority vote – to start their workday at 8 am instead of 9 am, and so they do. Tr. 406:15-407:13.

As to the specific needs of individual Cognizant employees, only Cognizant decides whether to change work schedules or work hours. Priya Ramani or the Team Leads will consider adjustment of schedules by Senior Process Executives and Subject Matter Experts for one-off and short-term requests such as those related to doctor's appointments and needs of children. For longer-term accommodations or changes in hours, the Cognizant HR team is involved. Google plays no role in any of that.⁸ Tr. 109:20-111:2.

As to overtime, it is Cognizant that approves all overtime worked by its employees. Union witness Katie Marschner testified that even when continued work is being *requested* by Google (““Can anyone stay late...””), Priya Ramani, who is “actually [their] direct supervisor” would have to approve it.⁹ Tr. 266:8-267:10. Google only needs to be notified to approve of overtime where Cognizant decides that it will bill Google for the overtime. If Cognizant decides not to bill Google for overtime, then it is not necessary to make Google privy to the overtime (but Cognizant would let Google know if associates are on the Google system outside of expected hours for security reasons). *See* Tr. 605:24-609:3; Employer Ex. 41 (showing Priya Ramani deciding that overtime is non-billable). As such, only Cognizant is determining “work schedules or the work hours, including overtime,” of its employees. 29 C.F.R. 103.40(c)(3).

⁸ Google witness Kevin Babu testified unequivocally that Google does not determine the work schedules of any Cognizant employees. Tr. 531:22-25.

⁹ Of the Union witnesses asked about overtime, Katie Marschner and Jonas Owens testified that they have never had to work overtime (Tr. 266:4-5; 456:11-14) and Samuel Regan has only worked overtime one time and he volunteered for it (Tr. 500:13-18).

E. Cognizant Exercises Direct and Immediate Control Over Supervision

***Supervision.** An entity exercises direct and immediate control over supervision by actually instructing another employer's employees how to perform their work or by actually issuing employee performance appraisals. An entity does not exercise direct and immediate control over supervision when its instructions are limited and routine and consist primarily of telling another employer's employees what work to perform, or where and when to perform the work, but not how to perform it.*

29 CFR 103.40(c)(7).

The Cognizant employees at issue operate in teams, within the Cognizant hierarchy,¹⁰ when performing work for vendors like Google. No Google employees are included in the hierarchy of supervision for Cognizant's employees. Tr. 89:21-90:1. Indeed, the Union's own witnesses presented the case that Cognizant supervises its own employees. For example, Union witness Katie Marschner laid out that "Priya is [her] boss," referencing Priya Ramani, a Cognizant employee. Tr. 183:21-184:2. **Only Cognizant supervisors** provide daily instruction to its employees on how to perform work.

To the extent that Cognizant employees interact with Google employees, it is "limited and routine" (29 C.F.R. 103.40(c)(7)):

¹⁰ The Union may try to argue that Cognizant's employees are part of Google's workforce based on Union Ex. 35 (a screenshot of a chart depicting Samuel Regan, a SPE at Cognizant, as being "under" the Vendor Manager at Google, who eventually reports up to Google senior management). That argument fails. The document plainly identifies Samuel Regan as a "vendor." Second, the exhibit does not accurately reflect the undisputed reality that Cognizant hired Mr. Regan after he interviewed with a Cognizant employee. Tr. 464:14-465:9. Mr. Regan admitted his Team Lead at Cognizant is the one with the most "say" into his performance evaluations. Tr. 498:13-20. Google plays no role in any of that. Tr. 111:3-18. Bottom line: Mr. Regan being listed as a vendor in Google's systems is meaningless. *See H&W Motor Express*, 271 NLRB 466, 468 (1984) (holding that staffing agency's supervisor's use of other company's business cards, and *being listed in their directory*, does not demonstrate a joint employer relationship.).

- **Limited:** Union witness Katie Marschner testified that she “*could*” reach out to a Google employee if an SPE has a bug¹¹ that she cannot resolve. Tr. 232:3-10. The Union presented an email between Cognizant and Google personnel, which according to Ms. Marschner describes two bugs Cognizant identified for Google: (1) issues accessing a Google tool, Script, and (2) an issue with another Google tool. Tr. 233:22-235:25. Such technical troubleshooting assistance is not akin to providing supervision of work. Rather, it is similar to asking a client to open a building (providing access to the Google tool) so work can be performed. *See Island Creek Coal Co.*, 279 N.L.R.B. 858, 864 (1986) (“Telling an employee where to perform, or what work to perform, at a given time or a given location is certainly not the type of supervision that would make that employer an employer of the employee performing the work.”).
- **Routine:** Ms. Marschner (an SME) testified that: “I have a weekly sync with my full-time employee that I communicate with We have a set agenda that *we collaborate on*.” Tr. 231:17-25. She also testified that there is just one Google employee with whom she is in contact. Tr. 232:11-15. That person is her counterpart at Google – her “peer” – and not a supervisor. Tr. 320:14-18. Union witness Liana Hernandez (also an SME) has similar interactions, and described the discussions as regular meetings to “make sure we’re all on the same page and we’re disseminating the correct information to [SPEs].” Tr. 382:19-383:6. Ms. Hernandez also interacts with a counterpart at Google who is a “point of contact,” not a supervisor. Tr. 350:14-351:1.

¹¹ A bug can refer to (1) a report of an error with the YouTube Music platform where external people can identify a problem, or (2) a report of an error with a tool needed to complete work which “can be handed up to an engineer or someone who can address that.” Tr. 193:12-194:6.

- **Limited:** Google provides *initial* training to Cognizant SMEs, who then train the Cognizant SPEs.¹² Indeed, it is part of the SMEs’ job to relay information about the work to be done to the other Cognizant employees on the project.¹³ See Tr. 263:6-16; 366:3-9.

Moreover, these examples of communication with Google personnel – in which Cognizant SMEs (not SPEs) are collaborating with their counterparts on what work is getting done, and how to clear technology roadblocks – would not establish actual supervision in any amount. After all, the Board Rule provides that “[a]n entity does not exercise direct and immediate control over supervision when its instructions...consist primarily of telling another employer’s employees what work to perform.” See 29 CFR 103.40 (c)(7).

With regard to performance management, Cognizant alone “issu[es] employee performance appraisals.” 29 C.F.R. 103.40 (c)(7). Google is not involved. Tr. 50:17-51:2, 111:3-18. Further, as to performance improvement plans, only Priya Ramani and Team Leads assess whether milestones are being met. Google has no involvement. See Tr. 50:10-16.

Google performs quality checks of Cognizant’s work product, but that is not a review of any particular individual’s work performance. As Union witness Liana Hernandez noted, the checks performed by Google employees are of tasks that are “pulled into a queue” and may be

¹² There was testimony that a Google employee (“Mr. Ribotto”) once provided training to SPEs. That happened because Cognizant manager Priya Ramani asked him to do so since the Team Lead and SMEs at the time did not have the bandwidth. Tr. 575:15-576:16; Employer Ex. 37.

¹³ SMEs are constantly reiterating how work should be and can be done. SME’s are tasked with making “recommendations, suggestions and improvements” to training documents. Tr. 91:2-3, 91:20-24. In fact, Union’s witness Liana Hernandez testified that she “help[s] make suggestions on training materials” and there would be “a bit of back and forth with the [Google] full-time employee and the SMEs making suggestions.” Tr. 349:12-350:6. Furthermore, Google also seeks collaboration with Cognizant on tools for quality assessment. Employer Ex. 39; Tr. 581:24-584:8.

“random” or relate to certain errors being seen – this added review is “just an additional set of eyes.” Tr. 394:19-395:5. Google’s witness Jonathan Weinman provided further clarity, stating that full-time employees at YouTube get “a random sampling of QA’d results” to assess “the program and the workflow” as a whole.¹⁴ Tr. 549:2-550:12.

F. Cognizant Provides Direction to the Employees at Issue

***Direction.** An entity exercises direct and immediate control over direction by assigning particular employees their individual work schedules, positions, and tasks. An entity does not exercise direct and immediate control over direction by setting schedules for completion of a project or by describing the work to be accomplished on a project.*

29 CFR 103.40 (c)(8).

Only Cognizant “assign[s] particular employees their individual work schedules, positions, and tasks.” 29 CFR 103.40 (c)(8).

- **Individual work schedules** – Cognizant manager Priya Ramani, Cognizant Team Leads, and Cognizant Human Resources are involved in setting individual work schedules. *See* Section E above.
- **Positions** – Cognizant hires its own employees into positions that it has established. *See* Section B above. Similarly, promotions are determined solely by Cognizant as well. *See* Tr. 138:1-9 (Priya Ramani stating that typically “SME’s are team members who are

¹⁴ There was testimony by Union witness Jonas Owens that Jonathan Weinman had **minimal** interaction with Owens (“I want to say...once”, “not regular”; Tr. 418:21-419:3), but even that did not hold up. Weinman testified: “Q: Have you ever had any one-on-one interactions with Mr. Owens? A: No, I’ve never interacted with him directly.” Tr. 553:10-12.

internally promoted because we believe in career progression and we want to, you know, give that opportunity to the team members as possible where we can.”) (emphasis added).

- **Tasks** – Cognizant determines which tasks are assigned to which employee.
 - Tasks are loaded onto a Google platform that Cognizant employees access, or are shared in a spreadsheet. Cognizant employees then choose “who we want to assign how much or what quantity of task do we want to assign.”¹⁵ Tr. 93:17-18.
 - Union witness Katie Marschner testified that (1) Cognizant employee Priya Ramani could reassign work, (2) Cognizant Team Leads could reassign work, and (3) as a Cognizant Subject Matter Expert, she could reassign work. Even Cognizant Senior Process Executives (the Music Generalists) can take work from each other and reassign it. Tr. 228:12-230:4.
 - Employer witness Priya Ramani confirmed that Subject Matter Experts and Team Leads reassign tasks. Tr. 94:11-16.

Google does not “assign[] particular employees” any work at all. 29 CFR 103.40 (c)(8). Google simply sets target timeframes for delivery of the work product, which is not indicative of direct and immediate control over direction to employees. *Id.* (“An entity does not exercise direct and immediate control over direction by setting schedules for completion of a project or by describing the work to be accomplished on a project.”).

¹⁵ Google’s witness Jonathan Weinman testified that at times there are ad hoc projects which are provided to Cognizant as well. Importantly, Weinman testified that he has never assigned an ad hoc project to a Cognizant generalist/operator; rather, [he] will assign it to “Ops Manager or Team Lead for **somebody at Cognizant to delegate.**” Tr. 556:2-557:2 (emphasis added).

G. Cognizant Decides and Conducts Discipline of its Employees.

Discipline. *An entity exercises direct and immediate control over discipline if it actually decides to suspend or otherwise discipline another employer's employee. An entity does not exercise direct and immediate control over discipline by bringing misconduct or poor performance to the attention of another employer that makes the actual disciplinary decision, by expressing a negative opinion of another employer's employee, or by refusing to allow another employer's employee to access its premises or perform work under a contract.*

29 CFR 103.40 (c)(6).

Cognizant alone decides, and conducts, discipline of its employees. Tr. 38:5-39:7. Union witness Katie Marschner confirmed this when asked, identifying “Priya and potentially Team Leads... [and] [m]aybe HR, if it is more of a conduct issue,” as the ones who issue discipline. Tr. 227:24-228:7; 327:24-328:13. So, too, with Union witness Jonas Owens, who testified that “Jordan[, my Team Lead,] would be the one who would handle discipline work, and Priya, and HR will do that.” Tr. 415:23-25.

Google has no role in any of this. Google may flag issues with the quality of work delivered by Cognizant, but the Board Rule is clear that an entity “does not exercise direct and immediate control over discipline by bringing misconduct or poor performance to the attention of another employer that makes the actual disciplinary decision, by expressing a negative opinion of another employer’s employee, or by refusing to allow another employer’s employee to access its premises or perform work under a contract.” *Id.*

H. Cognizant Decides Who To Fire

Discharge. *An entity exercises direct and immediate control over discharge if it actually decides to terminate the employment of another employer's employee. An entity does not exercise direct and immediate control over discharge by bringing misconduct or poor performance to the attention of another employer that makes the actual discharge decision, by expressing a negative opinion of another employer's employee, by refusing to allow another employer's employee to continue performing work under a contract, or by setting minimal standards of performance or conduct, such as those required by government regulation.*

29 CFR 103.40 (c)(6).

Only Cognizant can determine whether to terminate a Cognizant associate's employment. *See generally* Tr. 38:5-39:7. Google does not have the right to have an employee fired from Cognizant. Tr. 47:13-17. Google can ask that a Cognizant employee be moved off a Google assignment, but that is neither (1) indicative of direct and immediate control over discharge nor (2) tantamount to termination at Cognizant. As to the former, the Board Rule is clear that an entity **“does not exercise direct and immediate control** over discharge by bringing misconduct or poor performance to the attention of another employer that makes the actual discharge decision, **by expressing a negative opinion of another employer's employee, by refusing to allow another employer's employee to continue performing work under a contract,** or by setting minimal standards of performance or conduct, such as those required by government regulation.” 29 CFR 103.40 (c)(5) (emphasis added). As to the latter, Cognizant has a “deployable bench process” where it provides associates, up to the associate director level, **five fully compensated weeks to find another role on one of the hundreds of Cognizant projects.** During this time, an associate's sole focus is finding another role, and Cognizant has a team that

is dedicated to assisting employees find a new assignment within the company. Tr. 25:14-26:8; 62:17-63:13.

I. Other Evidence Presented

During the hearing, the Union examined witnesses about other aspects of their working experience, as if they were relevant to or reflective of joint employment. They are not. Moreover, the evidence showed that, even as to these additional matters, Cognizant is the one calling the shots.

1. Equipment Provided for Work

The Union elicited testimony suggesting that Google provides Chromebooks to the Cognizant workers at issue. That is not correct, and it does not matter for a joint employment analysis anyway.

First, Google does not own or provide Chromebooks to these workers, and it has not done so for more than a year. Priya Ramani explained that, as of October 2021, all vendors like Cognizant became responsible for providing equipment to their employees, and all existing Chromebooks at that time became Cognizant's assets. Tr. 148:24-150:14. Google's witness Kevin Babu confirmed this: "The current status [of ownership over Chromebook laptops] is Cognizant owns the assets" and has done so since late Q3/early Q4 of 2021. Tr. 536:19-537:13.¹⁶

Second, to establish that "an entity shares or codetermines the essential terms and conditions of another employer's employees, the entity must possess and exercise such substantial direct and immediate control over one or more essential terms or conditions..." of employment as discussed in Section III above. The providing of equipment is not an essential

¹⁶ One of the Union's witnesses, Jonas Owens, initially claimed that he had not requested hardware through Cognizant, but he retracted that after being shown documentation of the order for equipment he placed through Cognizant. Tr. 448:11-450:19; Employer Ex. 24.

term or condition of employment. 29 C.F.R. 103.40(b) (“‘Essential terms and conditions of employment’ means wages, benefits, hours of work, hiring, discharge, discipline, supervision, and direction.”).

2. Cognizant’s Return to Office Plan

The Union’s witnesses suggested in their testimony that it is *Google* that is controlling whether they can continue working from home. That was disproven by overwhelming evidence, including:

- the written announcement by Cognizant’s CEO in December 2021 that Cognizant employees would be returning to office in 2022 (Employer Ex. 9),
- the testimony of LeTonya Shaw regarding Cognizant Human Resources’ position on (and roll-out of) Cognizant’s return to work plan:

[A]t the end of the day, it’s our culture that differentiates us from our competitors and when you talk about our vision in terms of how we treat one another and being able to work together, we are best able to do that working in the workspace and so that is Cognizant’s position is that we desire for our employees to get back where we’re able to meet face to face, where we’re able to work together, where we’re able to work collaboratively so we can get back that energy and sense of community that we once had.

Tr. 51:22-52:7;

- the audio recording of Priya Ramani explaining in September 2022 to her Team Lead that Google would be fine with allowing individuals to work from home, but Cognizant HR would not (Union Ex. 14 (audio), 14A (transcript); Tr. 307:8-24);
- Priya Ramani’s testimony that Cognizant’s return to office decision was made by senior Cognizant business officials (Tr. 157:7-15); and

- Google witness Kevin Babu’s testimony that “Cognizant informed [him] that they will be moving to a new Cognizant facility in February” (Tr. 529:6-10).

Moreover, to the extent Google agrees with Cognizant’s decision, or has its own view, that is legally irrelevant to the joint employment analysis. Determination of place of work is not an essential term or condition of employment. 29 C.F.R. 103.40(b) (“‘Essential terms and conditions of employment’ means wages, benefits, hours of work, hiring, discharge, discipline, supervision, and direction.”). In fact, the Board Rule is explicit in that “[a]n entity **does not exercise direct and immediate control** over supervision when its instructions . . . consist primarily of telling another employer’s employees . . . **where and when to perform the work.**” 29 C.F.R. 103.40(c)(7).

J. Union Exhibit 44

Cognizant expects that the Union will argue that portions of Union Exhibit 44 (a compilation of the original 2015 Statement of Work and later amendments) evidence Google’s control over the training of new Cognizant associates. Not so, for all of the following reasons:

- The recently-unredacted text in Union Exhibit 44 that addresses training (Annexure 2 of the SOW, and amendments that repeat the same) merely sets out a training *plan* proposed by Google in 2015. The Union presented no evidence that any of the various components of that training plan were ever followed in practice, let alone that they are followed now. It has not come close to carrying its burden on that.
- To the limited extent the Union’s witnesses testified about new hire training, that testimony showed that Cognizant is *not* following Union Exhibit 44. Specifically, Katie Marschner testified that the “nesting” phase of training in her workflow

(Charts) lasts at least three weeks and sometimes longer. Tr. 261:21-263:5. That is well in excess of the 10-20 days stated in Union Exhibit 44 (p. 12), and it reflects that Cognizant is conducting longer and more robust training than Google requested. This is just one of the many ways in which the plan is not being followed in Austin.¹⁷

- The fact that the SOW includes a training plan does not indicate control or joint employment. After all, the Board Rule specifically provides that “*setting* minimal standards of performance or conduct” is not an exercise of direct and immediate control. 29 C.F.R. 103.40(c)(5).¹⁸

K. Totality of Relevant Facts

“Joint-employer status must be determined on the totality of the relevant facts in each particular employment setting.” 29 CFR 103.40(a). In this case, as detailed above, Google does not exercise “substantial direct and immediate control” over any of the essential terms and conditions of employment of Cognizant’s employees. To see how far removed the present facts are from establishing joint employment, one need only compare the seminal precedents that the

¹⁷ See Cognizant’s offer of proof in its December 20, 2022 Response to Order to Show Cause (“Cognizant does not follow Annexure 2 in Austin. The charts in the Annexure are not used or referenced by Austin management in deciding the training requirements or performance levels for newly-hired associates. The charts have never been modified or updated to reflect the training or levels of performance actually being required by Cognizant of the petitioned-for unit. Cognizant decides the levels of performance that are required from newly-hired Cognizant employees. That decision is based on the experience and input of Cognizant management and Cognizant Team Leads in Austin.”).

¹⁸ So, too, with the newly un-redacted listing of services to be provided (Annexure 1 of the SOW, Amendment Number 4 Section 3, Amendment Number 6 Section 2, and Amendment Number 8 Section 3). None of that reflects an exercise of control. The Board Rule provides: (1) “[a]n entity does not exercise direct and immediate control over supervision when...telling another employer's employees what work to perform...” and that (2) “[a]n entity does not exercise direct and immediate control over direction by...describing the work to be accomplished on a project.” 29 C.F.R. 103.40(c)(7),(8).

Board Rule explicitly embraced: *Laerco Transp. & Warehouse*, 269 NLRB 324 (1984), and *TLI, Inc.*, 271 NLRB 798 (1984).

In sharp contrast to the present facts, the supplier employers in both *Laerco* and *TLI* provided no on-site supervision; the user employers gave all the on-site direction to the supplier employers' workers. In *Laerco*, the user employer also attempted to resolve employee dissatisfaction without involving the supplier employer. The user employer in *TLI* went even further: it participated in two bargaining sessions with the supplier employer's union. And yet, in both *Laerco* and *TLI*, the Board found no joint employment.

Petitioner does not come close to establishing joint employment under the totality of the relevant facts.

IV. CONCLUSION

The Union has not come close to carrying its burden. As to each and every one of the areas that the Board examines to determine joint employer status, the evidence is overwhelming that Cognizant alone is the employer of the workers at issue. Google should be dismissed from the case.

Dated: December 21, 2022

PAUL HASTINGS LLP

By: /s/ Cameron Fox
Cameron W. Fox

Attorneys for Cognizant Technology
Solutions U.S. Corporation

EXHIBIT A

1 A. I do.

2 Q. And as part of your role as HR Lead, do you
3 [inaudible] records regarding wages, benefits, or
4 discipline to be filed and kept in Cognizant systems for
5 those Cognizant associates?

6 A. I do.

7 Q. Do you as part of your role as the HR Business Lead
8 provide support from an HR standpoint to the local
9 management over who work over the associates in Austin,
10 who work for Cognizant on projects assisting YouTube?

11 A. I do.

12 Q. All right. Tell me a little bit about Cognizant on
13 a larger level. How large of a company is Cognizant and
14 how many employees does it have overall?

15 A. So Cognizant is a Fortune 200 global company. We
16 have about 350,000 employees globally. We have about
17 35,000 employees that are located in North America.

18 Q. As part of employing that number of employees in
19 North America, does Cognizant maintain its own benefits
20 plans and such as health plans, retirement plans, and the
21 rest?

22 A. It does.

23 Q. Do the Cognizant benefits plans apply to Cognizant
24 associates working in Austin, Texas who support projects
25 for YouTube?

1 the time, our projects are aligned along clients.

2 Q. Is YouTube Cognizant's only client?

3 A. No.

4 Q. Now, let's talk about this group of Austin MCO
5 associates who are at issue. Who is the local manager
6 who immediately supervises the Austin MCO workers?

7 A. That would be Priya Ramani.

8 Q. I'm sorry. Say that again.

9 A. Priya Ramani.

10 Q. And who -- what are the levels of Cognizant
11 associate that work underneath her?

12 A. So up under Priya, you have Team Leads and then
13 you have SMA's. I'm sorry. Let me -- Subject Matter
14 Experts/Process Specialists and then up under that, you
15 would have your SPE's specialists.

16 Q. All right and what is the -- well, let's go in
17 reverse order.

18 The SPE's are the, if I understand correctly, the
19 lowest level that is under Ms. Ramani; is that right?

20 A. That's correct.

21 Q. All right. Do the -- do they have different
22 duties than the SME's, the level that is immediately
23 above the SPE's?

24 A. That would be correct.

25 Q. Okay, and based on your understanding in human

1 resources, what are those different duties that SME's
2 have that SPE's do not have?

3 A. So SME's stands for Subject Matter Experts.
4 Usually, they are more specialized. They have more
5 experience. They have more skills and they would
6 therefore also have more responsibility that your SPE's
7 have.

8 Q. Do you know what those types of responsibilities
9 are or would Ms. Ramani be more expert on those
10 details?

11 A. She could probably speak to specifics, but in
12 general, they would be assisting the Team Leads with
13 trouble shooting, coaching, quality control, QA. Those
14 types of things.

15 Q. Is the pay range for SME's higher than the pay
16 range for SPE's?

17 A. Correct.

18 Q. Then above the SME's are Team Leads; did I
19 understand that correctly?

20 A. Yes.

21 Q. You said that the SME's are assisting the Team
22 Leads. What is it that the Team Leads do? What is
23 their duty?

24 A. So the Team Leads would have more direct
25 supervisory responsibility over the SPE's. So they

1 could be doing performance evaluations. They could be
2 approving timecards. They could be reviewing
3 disciplinary actions. They have more of those types of
4 responsibilities over the SPE's that the SME's would
5 not have.

6 Q. Do the Team Leads provide information regarding
7 performance evaluations and potential discipline of
8 SPE's?

9 A. They do.

10 Q. Do they base that information on data given to
11 them by the SME's?

12 A. It could include information that the SME's are
13 providing them. Yes.

14 Q. Now, does Cognizant have some sort of a system to
15 allow Cognizant employees to move between projects and
16 customers while remaining paid and within their usual
17 benefits?

18 A. Yes. So -- I'm sorry?

19 Q. Please explain that.

20 A. Okay. Yeah. So we have what we call a bench
21 process. A deployable bench process by which when an
22 associate's project ends, they are placed on the
23 deployable bench to be made available for other
24 assignments within the organization. So it's almost
25 like an internal job board.

1 So during this period, they are not working.
2 Their sole focus is on finding another assignment
3 within the company. There is a team that is dedicated
4 to work with them directly on that. They are
5 interviewing. They are reviewing job postings and this
6 is paid time as well. So they are still being paid as
7 a current employee for a period of five weeks in search
8 of another role within the company.

9 Q. Do they continue to have all of the same
10 employment benefits that they had when they were
11 working on a project when they go to the bench?

12 A. They do.

13 Q. At the end of five weeks, does Cognizant have a
14 policy or a system where Cognizant associates will then
15 leave the company?

16 A. Yes. At the end of the five weeks, if an -- and
17 generally, five weeks is if a person is actively
18 interviewing and being considered, they aren't
19 terminated, but if a person has not yet been placed and
20 they're not currently interviewing, then at the end of
21 the five weeks, they will be separated from the
22 company.

23 Q. Does that associate then have the ability to
24 reapply to Cognizant in the future?

25 A. Yes. They are deemed as eligible for rehire.

1 Q. Now, let's talk about the hiring and rehiring
2 process.

3 How does Cognizant go about sourcing or funding
4 potential employees to become Cognizant associates?

5 A. So we have a full recruiting team that manages our
6 recruiting process. Typically, you would have a
7 posting that is posted on our careers website. We also
8 do postings on LinkedIn and other various tools and
9 avenues. The recruiting team would be responsible for
10 working with the manager to put together the job
11 description. They then post the job. They screen
12 applicants and then they forward their screened
13 applications to the hiring manager to select to
14 interview and then, at that point, the hiring manager,
15 as well as others, will interview and select candidates
16 that they would like to have offers extended to.

17 Q. Is the hiring manager a Cognizant employee?

18 A. Yes.

19 Q. Is the recruiting team that is assisting the
20 hiring manager in this process a Cognizant employee or
21 members of a Cognizant recruiting team?

22 A. Yes.

23 Q. And you said that the hiring manager will
24 interview candidates. Are clients of Cognizant, like
25 YouTube, part of that interview process where

1 candidates for Cognizant employment are being
2 interviewed?

3 A. No.

4 Q. Who makes the decision whether to hire a candidate
5 who has applied for Cognizant employment?

6 A. Cognizant.

7 Q. Are -- is YouTube as a client of Cognizant given
8 any veto or thumbs up power over those decisions?

9 A. No.

10 Q. Now, when a Cognizant associate is hired, is there
11 some sort of set of policies or information that is
12 provided to them as part of the onboarding process?

13 A. Yes. There's a number of information that is
14 provided to new hires upon onboarding with Cognizant.

15 Q. All right. Does Cognizant have an associate
16 handbook that it provides to its associates?

17 A. Yes, we do have an associate handbook.

18 Q. And is that part of the materials that are shared
19 with Cognizant associates when they are brought on
20 board?

21 A. Correct.

22 Q. And is that the type of information that was
23 shared with the Austin MCO employees who are at issue
24 in this case?

25 A. That is correct.

1 Q. Does Cognizant discipline Cognizant associates for
2 violations of Cognizant's codes, policies, and
3 regulations?

4 A. Yes.

5 Q. And is it -- in a situation like the Austin MCO
6 associates, if one of those associates is found to have
7 committed a violation of the code of ethics or any
8 other policy or regulation at Cognizant, who is it that
9 makes the decision whether to discipline or take action
10 against the associate as a result?

11 A. Cognizant does.

12 Q. Are there sometimes investigations that precede
13 that decision as to whether a Cognizant associate has
14 violated Cognizant policy?

15 A. Yes.

16 Q. How are those investigations handled? Who runs
17 them at a high level? What happens?

18 A. So it depends on the alleged violation. You could
19 have several parties taking place. We have an employee
20 relations management team that conducts investigations.
21 We also have compliance. Our security teams that
22 support investigations and we also have compliance
23 teams that may also support investigations.

24 Q. In those various teams and personnel that support
25 investigations, are those all Cognizant employees who

1 are running and participating in that process?

2 A. Those are all Cognizant employees. Yes.

3 Q. And when investigations result in findings

4 regarding policy findings or perhaps no violation of

5 policy by a Cognizant associate, are those findings

6 being made by Cognizant employees?

7 A. They are. Yes.

8 Q. Okay. We can go ahead and take down Exhibit 4,

9 please. Thank you.

10 Now, focusing again on the various benefits plans
11 that you were describing for us earlier, Ms. Shaw, and
12 that we saw in the exhibits. There are Cognizant
13 employees who work on projects, such as the YouTube
14 project in Austin. Are they simultaneously
15 participating in the Employer plans of Cognizant's
16 clients, such as YouTube?

17 A. I'm sorry. Can you repeat that again?

18 Q. For Cognizant associates like those in Austin MCO,
19 are they solely participating in Cognizant employer
20 plans or are they also participating in Google's
21 employment plans?

22 A. No. They are supporting or participating solely
23 in our benefit plans.

24 Q. Does the offerings -- let me say that correctly.
25 Do the offerings that Cognizant provides as far as

1 MR. TSAO: No objection.

2 MR. AGENBROAD: No objection.

3 HEARING OFFICER GRAY: Hearing no objection,
4 Cognizant's Exhibit 6 is received in the record.
5 **(Employer's Exhibit 4, received into evidence.)**

6 Q. BY MS. FOX: Thank you.

7 Now, Ms. Shaw, the description of benefit
8 offerings in Exhibit Number 6 is a multi-page
9 description covering healthcare insurance and employee
10 assistance, parental leave, and various categories. To
11 what extent did Cognizant's -- well, strike that.

12 To what extent did Cognizant's existing employee
13 benefits already provide sufficient coverage and
14 benefits for employees that no enhancement is necessary
15 for those working on a project supporting Google?

16 A. THE WITNESS: Probably -- Cognizant probably
17 provides 90 percent of the benefits that are provided
18 and there is even some overlap when it comes down to
19 maybe some of the enhanced benefits that Google has.

20 Q. What do you mean by that?

21 A. Meaning that the specific Google enhanced benefit
22 offerings that are offered to employees working on
23 Google include parental leave and educational
24 assistance that Cognizant already provides.

25 Q. So is the list of benefits provided in Exhibit

1 Number 6 in some cases reflecting benefits that would
2 be available to the Cognizant Austin MCO associates
3 regardless of whether they work on a Google project?

4 A. Correct.

5 Q. Thank you. All right. We can bring down Exhibit
6 Number 6.

7 As part of your role in human resources, do you
8 have an opportunity to oversee and evaluate the
9 paystubs and paystub format for paying Cognizant
10 associates?

11 A. Yes.

12 Q. All right. Let's go ahead and bring up what's
13 been marked as Employer's Exhibit Number 8.

14 **(Employer's Exhibit 8, marked for identification.)**

15 Exhibit Number 8 is a redacted copy of a paystub.
16 Ms. Shaw, do you recognize Exhibit Number 8 as being a
17 true and correct reflection of Cognizant's paystub
18 format for its associates, including the associates who
19 work in the Austin CMO (sic) group?

20 A. I do.

21 Q. MCO group. I said that backwards.

22 A. Yes, I do.

23 MS. FOX: We'd ask that Exhibit Number 8 be
24 admitted into evidence.

25 HEARING OFFICER GRAY: Any objection to the

1 receipt of Cognizant's Exhibit 8?

2 MR. AGENBROAD: No objection.

3 HEARING OFFICER GRAY: Hearing no objection,
4 Cognizant's Exhibit...

5 MR. TSAO: Yeah. No objection from the Petitioner
6 either.

7 HEARING OFFICER GRAY: Okay. Hearing no
8 objection, Cognizant's Exhibit 8 is received into the
9 record.

10 **(Employer's Exhibit 8, received into evidence.)**

11 Q. BY MS. FOX: Thank you.

12 All right. In the top left corner, Ms. Shaw, is
13 it fair to say that this exhibit reflects that the
14 payor of the wages is Cognizant Technology Solutions US
15 Corp?

16 A. THE WITNESS: Correct.

17 Q. Does the underlying client for a project, such as
18 YouTube, pay the wages of Cognizant's associates when
19 they're working on a project that supports that client
20 like YouTube?

21 A. No.

22 Q. Let's go ahead and bring down Exhibit Number 8 and
23 let's take a moment to talk a little bit more about
24 wages. How is it that wages and wage levels come to be
25 set for positions such as the SPE's and the SME's

1 working in Austin MCO?

2 A. That would be determined jointly by the business
3 as well as human resources.

4 Q. And when you say the business, exactly who are you
5 referring to? Not necessarily by name, but
6 specifically within the company, who are you talking
7 about?

8 A. The business leaders. So those may be the ones
9 that are like our client partners and deliver leaders
10 that are responsible for the delivery of the services
11 to the client.

12 Q. Okay, and those are all Cognizant employees that
13 you were referring to who are the business leaders?

14 A. Yes, ma'am.

15 Q. Okay, and does Cognizant have the ability to set
16 wage rates higher as it determines as needed to be able
17 to sufficiently recruit new employees?

18 A. Yes, it does.

19 Q. Are there business reasons why, in your experience
20 in human resources, you find that Cognizant might not
21 set wage rates higher than it needs to as far as
22 attracting people? Is there a financial reason for
23 that?

24 A. Yes.

25 Q. What is that?

1 we would also investigate that and the reasons to make
2 sure it's valid and then if it is, we can remove them
3 from the project, but that does not mean we would
4 separate them from employment.

5 Q. Okay. So to be clear, because I think it might've
6 -- I want to make sure we have a clear record.

7 A. Okay.

8 Q. If a client like YouTube is making a request that
9 a Cognizant associate be removed a project, does that
10 mean that they will be separated from their Cognizant
11 employment altogether?

12 A. No, it does not mean that.

13 Q. Okay, and does YouTube have the right or the power
14 to request that a Cognizant associate be fired from
15 Cognizant altogether?

16 A. They can request, but that doesn't mean that we
17 will honor it because they're Cognizant employees.

18 Q. And if Cognizant determines that a Cognizant
19 associate should remain with Cognizant and move to a
20 different project, does Cognizant allow for that?

21 A. Yes.

22 Q. Now, have there been instances in Austin MCO in
23 particular where Cognizant has made decisions to let
24 associates go based on investigations conducted by
25 Cognizant and findings that Cognizant has made?

1 goals that the associate has to meet within the defined
2 period of time, which is typically between 30 and 45
3 days. There are also weekly check-ins to give feedback
4 to the associate on if they are meeting those
5 expectations or not.

6 At the end of the performance improvement plan
7 period, if those expectations and requirements are not
8 met, then it can result in the termination of
9 employment.

10 Q. Who is it that is assessing those milestones and
11 the associate's performance going through a performance
12 improvement plan?

13 A. That would typically be either the Team Lead or
14 Priya, the Manager.

15 Q. And those are all Cognizant employees, right?

16 A. Those are all Cognizant employees.

17 Q. Who performs personnel evaluations or performance
18 reviews of the SPE's and the SME's in Austin CMO (sic)?

19 A. That would be Cognizant management. So that would
20 be the Team Leads and that would be Priya.

21 Q. Is HR involved in that process as well, in
22 Cognizant HR?

23 A. We oversee the process to ensure that the process
24 is being adhered to, but we don't participate in the,
25 you know, individual discussions and feedback and those

1 kinds of things unless they come to us for assistance
2 and feedback.

3 Q. Let's talk now about remote work and return to
4 office. Right now, we've discussed the fact that the
5 Austin MCO employees are remote. Has Cognizant as a
6 business put out any messaging regarding its desire for
7 its workforce in the US to come back to the office in
8 2022 or 2023?

9 A. Yes. There have been several messages sent to our
10 employees around returning to the office.

11 Q. Talk to us about Cognizant's position on return to
12 office for Cognizant associates.

13 A. So, you know, there's been a lot of passion around
14 return to the office, but there's no doubt that there's
15 been a lot lost over the past year and a half, two
16 years, with our employees working within their homes.
17 So the desire is that we are now able to get our
18 employees back in the same workplace where they're able
19 to work face to face so that we're able to get back
20 that sense of community and that energy that we had
21 prior to the pandemic. Depending on the need and the
22 roles, the return to office may look differently. But

23 at the end of the day, it's our culture that
24 differentiates us from our competitors and when you
25 talk about our vision in terms of how we treat one

1 another and being able to work together, we are best
2 able to do that working in the workspace and so that is
3 Cognizant's position is that we desire for our
4 employees to get back where we're able to meet face to
5 face, where we're able to work together, where we're
6 able to work collaboratively so we can get back that
7 energy and sense of community that we once had.

8 Q. Has that messaging been sent out from senior
9 officials at Cognizant as well?

10 A. Our CEO has sent out messages. He's also spoken
11 to that in our quarterly debriefings as well.

12 Q. Let's go ahead and bring up what's has been marked
13 as Cognizant's or Employer's Exhibit Number 9.

14 **(Employer's Exhibit 9, marked for identification.)**

15 And it is titled Cognizant, A Message from Brian.
16 Ms. Shaw, who is Brian?

17 A. Brian is our CEO. Present CEO.

18 Q. Do you recognize Exhibit Number 9 as a true and
19 correct copy of Cognizant's CEO's message to the
20 Cognizant workforce in December of 2022 regarding
21 return-to-work plans for the Cognizant associates in
22 the United States?

23 A. I do.

24 Q. And is this the, one of the messages that you were
25 just referring to in your testimony?

1 Q. Okay. All right. So you said that SPE's -- I'm
2 sorry. SME's. I'm trying to switch my own vocabulary.
3 You said that SME's are responsible for coaching and
4 quality control measures of SPE's; is that correct?

5 A. Yes, in general. Yes.

6 Q. Do SPD's also have coaching responsibilities? In
7 other words, do they participate in shadowing or
8 training, new hires who are also SPE's training other
9 SPE's?

10 A. They could on occasion, but that would not
11 typically be a regular part of their job
12 responsibilities.

13 Q. Do SME's have any responsibility for disciplining
14 SPE's?

15 A. Priya could probably best speak to that as being
16 the main point of contact for operations.

17 Q. Okay. You mentioned the deployable bench. Could
18 you explain that for me again?

19 A. Yes. So when an associate's role ends on a
20 project, associates up to the associate director level
21 are placed on what we call a deployable bench to be
22 made available for other projects within our hundreds
23 and hundreds of projects within Cognizant. They
24 complete a profile, which is pretty much their resume,
25 and they are given access to a certain database that

1 consists of available jobs within the organization.
2 So it's like an internal recruiting process. They
3 are given five weeks of targeted time and this time
4 they're not working on any other projects. The sole
5 focus is on them finding another role. So the team is
6 working with them for the period of this five weeks as
7 I mentioned before. They are still active employees.
8 Their pay and benefits remain the same and if at the
9 end of that five-week period they are not placed in a
10 role, then at that point, they're separated from the
11 company. So there's benefits, of course, for this
12 process for both the associate, as well as the
13 organization.

14 Q. Okay. So let's talk about a specific example. Is
15 there a group -- let me phrase it a different way.

16 Are you aware of the programming group having that
17 project ending recently?

18 MS. FOX: Objection. Vague.

19 Q. BY MS. CAMPBELL: Are you aware of a group that
20 involved in programming or playlist that project was
21 terminated recently?

22 A. THE WITNESS: I can't recall accurately. I'm
23 sorry.

24 Q. Are you aware of any project -- you talked about
25 projects that Cognizant has with the clients, correct?

1 My name is Aaron Agenbroad. I'm Counsel for
2 Google in this matter and I had a few questions
3 following up on the questions that you were asked by
4 your Counsel and Ms. Campbell.

5 First, just to provide the Hearing Officer with
6 some context, you were asked does Cognizant have a
7 number of clients. By scale of order or magnitude, can
8 you share how many different clients Cognizant may
9 have? Whether that's hundreds or whether that's
10 thousands.

11 A. THE WITNESS: I would say thousands.

12 Q. Okay, and then you also indicated that at any
13 given time, there's hundreds and hundreds of projects
14 that are ongoing and those would be hundreds and
15 hundreds of projects for a variety of clients.

16 A. That is correct.

17 Q. Okay, and for a Cognizant employee, would it be
18 unusual for them to move over time across any of those
19 hundreds and hundreds of clients?

20 A. That's not unusual at all.

21 Q. Okay, and in instances where a project comes to an
22 end and you were provided questions around an example
23 of that. Even in the example where there was a
24 cessation of the project by the client, the employees
25 that were assigned in that project, do they remain

1 verticals?

2 A. So I was directly responsible for those two
3 verticals, which I still am, for a total of five and a
4 half. For five years and nine months. However, as the
5 most senior person on the HR team and one of the most
6 tenured, I have had oversight over all the verticals at
7 various points of time.

8 Q. Perfect and based on that, you know, five plus
9 years of experience certainly most focused on two of
10 the verticals in your current role, are there
11 differences between those verticals in your experience
12 based on how they treat benefits, hiring practices, or
13 other Cognizant policies?

14 A. Not at all.

15 Q. Turning very briefly to benefits, you were asked
16 some questions about Cognizant provided benefits; do
17 you recall that?

18 A. I do.

19 Q. All right, and your Counsel walked you through a
20 couple exhibits. I think Employer 1 or I'm sorry,
21 Employer 2 and Employer 3 that identified, for example,
22 health plans and 401K; do you recall that?

23 A. I do.

24 Q. As far as those Cognizant provided benefits, does
25 Google play any role in selecting who those vendors are

1 that Cognizant chooses to provide 401K or healthcare?

2 A. No.

3 Q. Does Google play any role in selecting what

4 healthcare coverages are offered to Cognizant

5 employees?

6 A. No.

7 Q. As far as the providers for healthcare to

8 Cognizant employees, for example, Blue Cross, Aetna,

9 Cigna, does Google play any role in identifying which,

10 what providers those would be?

11 A. No.

12 Q. Does Google play any role in setting the premiums

13 for healthcare or the copays for healthcare to your

14 experience or knowledge?

15 A. No.

16 Q. Okay, and similarly moving gears to the 401K

17 program, it looked like the Google, I'm sorry, the

18 Cognizant selected vendor was a company called Empower;

19 is that right?

20 A. That's correct.

21 Q. To your knowledge, did Google play any role in

22 identifying or selecting Empower as the 401K provider

23 for Cognizant employees?

24 A. No.

25 Q. Does Google, to your knowledge, play any role in

1 establishing the terms of that 401K? For example,
2 whether there's a company match and how much that
3 company match would be.

4 A. No.

5 Q. All right. Looking in connection with the hiring
6 process, you indicated that Google/YouTube here doesn't
7 hire anybody for its projects as far as Cognizant
8 employees; is that right?

9 A. They do not.

10 Q. And they also don't have any veto power over who
11 gets hired by Cognizant for Google projects; is that
12 accurate?

13 A. That is accurate.

14 Q. To your knowledge or understanding, does Google
15 even review any resumes relating to candidates for
16 Cognizant that's considering for hire?

17 A. No.

18 Q. To your knowledge or understanding, does Google
19 interview any of those candidates that Cognizant
20 ultimately screens or selects to hire?

21 A. No.

22 MR. AGENBROAD: I have nothing further. Thank
23 you.

24 COURT EXAMINATION

25 Q. BY HEARING OFFICER GRAY: I just have a few

1 questions. Some are just clarifying questions.

2 Now, we talked about verticals a lot and there
3 being nine different verticals. What are those nine
4 verticals?

5 A. THE WITNESS: Okay. You're going to put me to the
6 test.

7 Okay. So let me explain. I apologize if I go
8 into too much detail, but when you look at Cognizant,
9 we're divided by three practices. IOA, Intuitive
10 Operations and Automation is one practice that runs
11 across all the business verticals.

12 Business verticals are aligned by the industries
13 that we support. So those industries and slash
14 business verticals would be healthcare, life sciences,
15 communications, and technology. That's one. Banking
16 and financial services. Products and they just changed
17 the name. Products and Services. And there's four
18 more. We've changed the names. We've combined them,
19 but basically, we have these business verticals that
20 are lined by the industries that we support.

21 Q. So which vertical is the Austin MCO? Which one
22 would they be considered?

23 A. That would be part of our CMT vertical. The
24 Communications Meeting and Technology vertical.

25 Q. And then we talked about the salary or wages being

1 please raise your right hand?

2 (Whereupon,

3 **PRIYA RAMANI**

4 having been sworn/affirmed, was called as a witness

5 herein, and was examined and testified via video-

6 conference, as follows:)

7 HEARING OFFICER GRAY: Okay. Thank you. Can you
8 please state your name and spell it as well for the
9 record?

10 THE WITNESS: Priya Ramani. P-R-I-Y-A. Last
11 name, R-A-M-A-N-I.

12 HEARING OFFICER GRAY: Thank you.

13 MS. FOX: May I proceed?

14 HEARING OFFICER GRAY: Yes.

15 MS. FOX: Thank you.

16 DIRECT EXAMINATION

17 Q. BY MS. FOX: Good afternoon, Ms. Ramani.

18 A. Good afternoon.

19 Q. Where do you presently work?

20 A. I work for Cognizant Technology Solutions.

21 Q. Go ahead. Where are you based?

22 A. Based out of Austin.

23 Q. How long have -- well, what is your current
24 position or title for Cognizant in August?

25 A. Service Delivery Manager.

1 have worked with organizations like Ascension, ADP, GE,
2 and also UNS and throughout my career, I have played
3 roles managing projects, transitions, quality
4 transformations, and business solutions and processing
5 permits ideations.

6 Q. Thank you for that. In your current role in
7 Austin, do you manage or act as a supervisor to other
8 Cognizant associates?

9 A. Yes, I do. I manage the YouTube Music Operations
10 team here in Austin and I have a small team also in
11 India that I am responsible for.

12 Q. Who is your direct supervisor?

13 A. Nitika. She is the [inaudible].

14 Q. Is she also a Cognizant employee?

15 A. Yes. I report to Cognizant.

16 MS. FOX: Let's take a moment to look at the
17 organization of your team and those immediately above
18 you. Let's pull up what has been marked as Employer's
19 Exhibit Number 10.

20 **(Employer's Exhibit 10, marked for identification.)**

21 And Exhibit Number 10 has been already shared with
22 the parties and with the Hearing Officer and with the
23 Court Reporter.

24 Madam Hearing Officer, may I proceed or would you
25 like me to wait a moment while you get caught up?

1 other domains we have and under Suera are her SPE's and
2 SME's who work with her on that particular line of
3 work.

4 Q. Are all of the individuals reflected on Exhibit 10
5 Cognizant employees?

6 A. Yes. Every single one of them.

7 Q. Is the chart as reflected on Exhibit 10 accurate
8 as far as who works in which position and reporting to
9 whom?

10 A. Yes.

11 MS. FOX: We'd ask that Exhibit 10 be moved into
12 evidence.

13 HEARING OFFICER GRAY: Any objections to the
14 receipt of Employer Cognizant's Exhibit 10?

15 MR. TSAO: No objection.

16 MR. AGENBROAD: No objection. Thank you.

17 HEARING OFFICER GRAY: Hearing no objection,
18 Cognizant's Exhibit 10 is received into the record.

19 **(Employer's Exhibit 10, received into evidence.)**

20 Q. BY MS. FOX: Thank you very much.

21 So we can bring down Exhibit Number 10 and Ms.

22 Ramani, let's just talk now about the levels. First of

23 all, are there any Google employees included anywhere

24 in the hierarchy of your chain of command above you or

25 below you?

1 A. THE WITNESS: No.

2 Q. As far as the level of workers immediately below
3 you, I think I understood you to say that those are the
4 Team Leads that report directly to you; do I have that
5 right?

6 A. Yes.

7 Q. All right. What do you do as far as managing and
8 supervising the Team Leads?

9 A. So we have four Team Leads here. So we have five
10 Team Leads and two of them manage one particular area.
11 So each of the Team Leads are responsible to manager
12 the tasks or the queues if I can put it in our simple
13 language to oversee the work that is performed by the
14 SPE's and the SME's to ensure that the task is
15 completed on time and as per what is agreed.

16 Q. And do you then directly supervise those Team
17 Leads in that you give performance feedback on them and
18 do their performance reviews?

19 A. Yes. I do the performance feedback and manage the
20 performance of the Team Leads directly and they in turn
21 manage the performance of their subsequent teams under
22 them between the SME's and SPE's.

23 Q. Roughly, how many SME's are there, those Subject
24 Matter Experts, that occupy that level immediately
25 below the Team Leads?

1 A. We have 16 in the team.

2 Q. What is the role of a Subject Matter Expert or an
3 SME in Cognizant's Austin MCO unit?

4 A. So as the name, SME's are Subject Matter Experts.
5 They are between the SPE's and the Team Leads. The
6 SME's requires them to provide training to the SPE's,
7 provide coaching to the SPE's in terms of any errors
8 that they make. They also keep an eye on terms of what
9 work is being performed by the SPE. They are also
10 responsible to allocate the tasks that we get in terms
11 of how it is distributed.

12 Understand that if the SPE's are overwhelmed or if
13 they need support to kind of free a line, they provide
14 performance coachings. Performance coachings are
15 restricted to of terms of quality coaching and any of
16 the SPE's make an error, it is the SME's responsibility
17 to talk to them and make them understand why the error
18 was made and then they feedback in terms of how we can
19 mitigate what controls can be put in place.

20 They are also tasked with the responsibility of
21 reviewing the training documents, which is I believe
22 Google owned them and Google maintained, but we here
23 also make recommendations, suggestions, improvements to
24 those training documents.

25 In their day to day tasks, SME's would also reach

1 out to the Team Leads or escalate if they see any
2 particular queue is going to be at risk or if it's
3 going to be any task is at risk of noncompletion or
4 they notice that we have any team member
5 underperforming or if any team member found to be
6 tardy, not being responsive to the SME's coaching or
7 their feedback or repeated line of, you know, trying to
8 bring them into that stop. Then we would definitely
9 look up to our SME's to provide that feedback onto the
10 Team Lead. It is then the Team Lead's responsibility
11 to document them and have a performance coaching.
12 Overall trying to understand if it's something that the
13 SPE's need help and in subsequent situations, if it is
14 -- that they see that the errors keep happening, the
15 Team Leads then also bring up those discussions with me
16 and then I escalate it to whoever. We manage
17 performance discussion, which is also internally called
18 as processing or sorry. PIP. Performance Improvement
19 Programs.

20 Q. That's a helpful overview. Let's take a moment to
21 focus on various components that you just described.
22 You mentioned that if the SPE's are overwhelmed, there
23 may be a need to realign and that the SME's are the
24 ones who do that. What do you mean by that?

25 A. So typically when a task comes in, it is, you know

1 -- it's loaded in a Google platform that we access.
2 Things can also come to us on let's say a simple
3 spreadsheet in an Excel file, right, and we distribute
4 it among our team members, based on the other various
5 tasks that they're performing because the SME's and the
6 Team Leads have an understanding of who is placed where
7 and what is it that they are currently working on.

8 So if I seem to be in a position that I can finish
9 my existing task, let's say in the next one hour, then
10 I would be assigned tasks that I can continue to the
11 end of the day, but if I notice that there is another
12 team member who seems, that can finish their tasks
13 because it's maybe critical or if it's something, you
14 know, not so easy, they can finish only by four, then
15 they are assigned tasks only for the remaining one
16 hour.

17 So we get to choose who we want to assign how much
18 or what quantity of tasks do we want to assign because
19 there are definite deadlines on this queues that we
20 would want to meet. Some needs to be finished by the
21 end of the day. Some of it needs to be finished by the
22 end of the week that we are answerable for the
23 deliverables. So this is not like rigid. Come in the
24 morning that it's a set work I come in I pick up. Team
25 members know where to look up these tasks and look for

1 these rules but SME's also keep an eye, along with the
2 Team Lead in terms of moving them. Okay, I assigned 10
3 tasks to let's say Priya, by evening at 4 p.m., they
4 see that Priya has managed to get through only, you
5 know, six and she needs help at four, the remaining
6 four is picked up and reassigned to somebody in the
7 team who seems to have capacity because the goal is to
8 ensure that all ten are finished by the day. It
9 doesn't matter if Priya finishes it or Priya's, you
10 know, colleague finishes it.

11 Q. That reassignment of tasks that you're describing,
12 that decision is being made by the SME and/or by a Team
13 Lead, depending on who is most involved in that
14 particular moment as far as assessing the work needs;
15 is that right?

16 A. Yeah. So when we say SME's, SME's are assigned to
17 certain queues or certain types of tasks. A Team Lead
18 oversees a group of such tasks. That's why we have
19 SME's reporting into one Team Lead. Sometimes, it
20 might not be feasible for a Team Lead to go into every
21 single queue because that adds up to 15 queues.

22 So we have the line of vision with every SME who
23 can see into what's happening into those five different
24 areas and to feed that information back up to the Team
25 Lead saying hey, we are at risk, we seem to have, you

1 certain days?

2 A. All platforms that we have, definitely have
3 something called an audit trail. It logs -- there is a
4 log created in every tool that is accessed saying who
5 accessed what at what time. So I don't know if Google
6 chooses to see that, but yes, the logs are available if
7 they want.

8 Q. But as far as the assessing of the rate at which
9 Cognizant SPE's are performing their work, that's being
10 done only on the Cognizant side, right?

11 A. Yes. Yes. So Google would only question us and
12 we would have to go back with a response if as a team
13 haven't met that number, but not for an individual SPE.
14 That is more...

15 Q. Now, having laid out for us these differences
16 between an SPE and an SME and the increased roles and
17 responsibilities for an SME, is there a difference in
18 how those two positions are compensated?

19 A. Yes.

20 Q. What is the average current rate for, let's start
21 with an SPE? So the lower level. What's the average
22 rate for SPE's in Austin MCO?

23 A. If I remember correctly, SPE rates are, is
24 anywhere between a \$19 and a \$20 per hour. The SME's,
25 their starting pay starts at \$22.

1 [Off the record]

2 MS. FOX: All right. So go ahead, Hearing
3 Officer.

4 HEARING OFFICER GRAY: Okay. We discussed the
5 document and the potential objection and right now, I'm
6 going to reserve making a ruling on the admission of
7 Cognizant's Exhibit 12. Go ahead.

8 MR. TSAO: That's fine.

9 Q. BY MS. FOX: Thank you. So the record will be
10 that Exhibit 12 has been offered, but not admitted and
11 we can go ahead and bring down Exhibit 12.

12 Let's talk, Ms. Ramani, next about hiring. So we
13 heard already this morning about the hiring process at
14 Cognizant for Cognizant associates and I'd like to get
15 your perspective on hiring specifically in Austin.
16 Does Google or YouTube have any involvement in the
17 process of attracting, screening, interviewing, or
18 hiring specific candidates to become Cognizant
19 associates working in Austin MCO?

20 A. THE WITNESS: No.

21 Q. I'm sorry. It was a little muted. What was your
22 answer?

23 A. No.

24 Q. No involvement?

25 A. No involvement.

1 Q. Who does make the decisions in Austin in
2 particular about who to hire onto Cognizant's team?

3 A. It'll be me and I would sometimes perform a panel
4 with the Team Leads. So together, we would decide on
5 certain candidates, but it's always Cognizant.

6 Q. Are the resumes of the candidates sent to Google
7 or YouTube for them to weigh in on as part of that
8 process?

9 A. No.

10 Q. As far as the amount of pay that is set for SPE's
11 and for SME's in Austin MCO, who is making that
12 decision regarding what they will be paid?

13 A. So this comes from HR when somebody is onboarded.
14 As soon as we finish an interview, then HR has a
15 discussion with the onboarding candidate and that's
16 when the offer is thrown after that.

17 Q. All right. So the -- in the HR, you're talking
18 about there was Cognizant HR, correct?

19 A. Cognizant HR. Yes.

20 Q. There are -- well, let me back up.

21 Let's talk for a moment about the hours of the
22 SME's and the SPE's in Austin. Are there -- is there a
23 primary span of hours during the day when the SME's and
24 the SPE's in Austin MCO typically work?

25 A. We work Monday through Friday 8 a.m. CST to 5 p.m.

1 CST.

2 Q. Do you adjust start times and end times
3 periodically for people on the Austin MCO team as
4 needed to accommodate their needs?

5 A. Yes, we do.

6 Q. Who makes the decision whether to accommodate an
7 hour's change for an SME or an SPE in Austin MCO?

8 A. It could be me and the Team Leads.

9 Q. What other considerations that you may take into
10 account when deciding whether to grant a change to
11 hours for one of the Cognizant associates working in
12 Austin MCO?

13 A. Most of it is personal. They might have things
14 like a doctor's appointment or, you know, drop off the
15 child, pick up child from a daycare. So we do make
16 those accommodations.

17 Q. And if somebody on the Austin MCO team needs a
18 longer term accommodation or change to their hours, do
19 you work with anyone else within Cognizant to make that
20 decision?

21 A. We work with our Cognizant HR team to understand
22 what process or protocols can be followed.

23 Q. Does Google or YouTube have any input or influence
24 into those decisions you've just described regarding
25 adjusting hours or schedules, either short term or long

1 term?

2 A. No.

3 Q. Let's talk about performance management for a
4 moment. Do the SPE's and the SME's in Austin CMO (sic)
5 receive performance evaluations at regular intervals
6 from Cognizant management?

7 A. Yes. The Team Lead manages the performance
8 management of SME's and SPE's directly. Occasionally,
9 there could be SME's or SPE's that the Team Lead would
10 bubble up to me saying we would want to have a second
11 round of discussion based on some performance concerns.
12 So that's when I would also get involved, but I managed
13 the performance of the Team Leads directly and they are
14 -- they manage their teams.

15 Q. Does Google or YouTube get involved in any way in
16 that process of delivering performance evaluations to
17 the Cognizant associates working in Austin MCO?

18 A. No.

19 Q. Who decides whether a Cognizant MCO associate will
20 be disciplined in the event that there is a concern
21 that a Cognizant associate violated a policy?

22 A. Cognizant decides.

23 Q. Okay, and what role do you have in that?

24 A. So most of these disciplinary requests comes to me
25 from the Team Leads. So we try to understand, saying

1 Q. How do you hire for SME's?

2 A. So typically, SME's are team members who are
3 internally promoted because we believe in career
4 progression and we would want to, you know, give that
5 opportunity to the team members as much as possible
6 where we can. In the event that we are unable to find
7 a suitable candidate with them, then we check within
8 other projects and Cognizant's where we have interested
9 candidates that might be eligible and more interested.

10 Q. Okay. Currently, how -- of all of the SME's at
11 MCO currently, how many of them were promoted
12 internally from SPE?

13 A. I believe a good 90 to 95 percent of them come
14 from an internal resource.

15 Q. Okay, and what is the criteria for promoting an
16 SPE to an SME?

17 A. Their current performance standards. Their tenure
18 with Cognizant.

19 Q. I mean, their titles are Subject Matter Expert,
20 right? That's what SME stands for; am I correct?

21 A. Subject Matter and Process Specialist, yes.

22 Q. Okay. So I presume that they experts in their
23 subject; is that a fair statement?

24 A. Yes.

25 Q. Are they tend to be folks who are more senior, who

1 MS. CAMPBELL: No, I agree with you. I'm just
2 trying to get -- I'm trying to better understand her
3 answer, so.

4 HEARING OFFICER GRAY: Okay. So maybe if you
5 could repeat the question, though, before she answers.

6 Q. BY MS. CAMPBELL: Sure. My question was just
7 whether that security sensitivity coming from the front
8 facing nature of the MCO's work was a factor in the
9 decision to return to office.

10 A. THE WITNESS: We received the request from Google
11 to return to office, but it is Cognizant's decision to
12 return to office.

13 MS. CAMPBELL: Okay. Ms. Gray, if I might have
14 just a moment to consult with my team, I think I'm
15 nearing the end of my questions.

16 HEARING OFFICER GRAY: Yes. Sure. Let's go off
17 the record for two minutes. I'll just stay here.

18 *[Off the record]*

19 HEARING OFFICER GRAY: All right, Ms. Campbell.
20 You can go ahead with your question.

21 Q. BY MS. CAMPBELL: Okay, Ms. Ramani. I really
22 don't have many more questions. Thank you for your
23 patience.

24 We talked a little bit about the Google tools that
25 the MCO employees use to do their work. Can you tell

1 me a little bit about the equipment or the assets that
2 the team members use to do their work?

3 A. THE WITNESS: So all team members use Google
4 Chromebook and as part of the project onboarding
5 process, we are receiving a Chromebook through which
6 our access is permissioned. This was given to us by
7 Google. October of last year, the process was changed
8 that all vendor teams are responsible to provide
9 equipment for all of their employees so we have been
10 receiving all our Chromebooks and all of the equipment
11 that we need to process from Cognizant.

12 Q. Okay. So the new process -- I'm going to call it
13 a new process. You said it changed in when? October
14 of last year?

15 A. Yes.

16 Q. Okay. Is the -- did the type of equipment change?
17 Meaning are you no longer using Google Chromebooks?

18 A. No, we still use Google Chromebooks, but it's no
19 longer a Google asset. All existing Chromebooks that
20 we have have all been the Cognizant asset.

21 Q. Okay. So is it fair to say that employees who
22 have come on after October of last year have Cognizant
23 owned Chromebooks?

24 A. No. Anybody who has joined the project right from
25 incubation, all the assets has been remapped and it has

1 -- it is now a Cognizant asset.

2 Q. Okay. So your testimony is that everyone working
3 at MCO has a Cognizant owned Chromebook?

4 A. Yes. It could have been previously assigned to us
5 by Google, but right now, they are all reassigned to
6 being a Cognizant asset.

7 Q. Okay. What does that mean, reassigned to be a
8 Cognizant asset?

9 A. Maybe it was previously labeled as a Google owned
10 asset. It is no longer is what I meant. It is a
11 Cognizant owned asset. So if I have any issues with
12 the asset, I need a replacement or I need an upgrade, I
13 would be reaching out to the Cognizant IT team and
14 request.

15 Q. Okay. Tell me about holidays at the MCO. I'm
16 assuming that folks get off certain holidays. New
17 Year's, Thanksgiving, that kind of stuff. Who sets
18 that holiday schedule?

19 A. So our teams follow the Google holiday calendar.
20 In the Google holiday calendar, there are holidays that
21 are available to us, which is exclusively for what we
22 call the vendor teams and then there are certain
23 holidays that is only for Google employees. We are not
24 allowed to take holidays that is their -- or is on the
25 calendar for Google employees. As vendor teams, we are

1 allowed to take holidays and leave. That is for --
2 most of these holidays are matched to what I see in the
3 Google calendar. It's in the Cognizant calendar as
4 well.

5 Q. Okay. So -- okay. The Cognizant calendar. Tell
6 me about that. Are there a list of holidays on the
7 Cognizant calendar?

8 A. There is a different set of holidays on the
9 Cognizant calendar and if a vendor team following the
10 vendor -- sorry. If a vendor team is following the
11 calendar has less number of days. Cognizant would
12 always compensate that because there are a number of
13 holidays that is given to us as Cognizant employees.

14 It's something that we're all invited to.

15 Q. Okay. So employees are entitled to the number of
16 Cognizant holidays; is that correct?

17 A. Yes.

18 Q. But they follow the Google holiday schedule; is
19 that correct?

20 A. It is scheduled for vendors, yes.

21 Q. Okay. So if a holiday is a Cognizant holiday, but
22 it's not a Google holiday, the MCO employees would have
23 to work on that day; is that correct?

24 A. If it's a Cognizant holiday but it is not on the
25 Google calendar, yes, MCO employees would have to work.

1 *[No audible response]*

2 Now, what is there is a Cognizant holiday that is
3 not on the Google calendar. Would the Austin MCO
4 employees be able to still take that Cognizant holiday?

5 A. THE WITNESS: No, we would not be able to take
6 that.

7 Q. Okay, and then we also talked a little bit about
8 the return to office that is going to be happening here
9 with the Austin MCO employees. Were you one of the
10 decision makers in Cognizant's decision to require the
11 MCO Austin employees to return to the office?

12 A. No.

13 Q. Do you know who the decision makers were?

14 A. This would have to be on the senior business
15 level.

16 Q. And then as far as you have explained the process
17 for discipline and, you know, escalating issues. Can
18 an SME go straight to HR to report issues that they are
19 having with an SPE or would they have to escalate that
20 to their Team Lead first?

21 A. If it's to do with the performance on the project,
22 they get to go to the Team Lead, but if it's a conduct
23 issue, the SME's can directly approach the HR.

24 Q. If an SPE noticed what they felt was a conduct
25 violation, could an SPE also call HR to report what

1 Q BY MR. TSAO: Katie, can you tell us where you are
2 currently employed?

3 A Yeah, I work for Cognizant Technology Solutions.

4 Q Okay, and how long have you been employed at
5 Cognizant?

6 A Approximately a year and nine months.

7 Q Okay, very good.

8 And what is your current job title?

9 A SME, or Subject Matter Expert.

10 Q Okay, very good.

11 And can you tell us the -- just generally what are
12 your job responsibilities?

13 A Yeah, generally I evaluate the quality of the Music
14 Generalists' work. So, I use rubrics to do that. I
15 open samples of their work, follow rubric, and provide a
16 grade for that work.

17 Outside of that, I lead a weekly sync with my team
18 where I fill them in on any process updates or
19 announcements that have been made to me by Priya or by
20 any Google full-time employees that I work with.

21 Q If I could just -- well, I'm sorry to interject,
22 but you just mentioned Priya. Who is Priya?

23 A Priya is my boss, I guess. I am not sure of her
24 exact title, but I believe she is like the Project
25 Manager of YouTube Music MCO.

1 Q All right, and what is Priya's last name?

2 A Ramani.

3 Q Okay. So, you also just made reference to Music
4 Generalists. Could you tell us generally what they do?

5 A Yeah. The Music Generalists, also sometime are
6 referred to as Agents, they are the ones that actually
7 take work on a daily basis, so they are provided work,
8 either in the front of the Bug, or through a
9 spreadsheet.

10 I'm sorry, my dog.

11 So, sorry, in the front of the Bug, your
12 spreadsheet or -- and they use different Google tools,
13 so they will complete the work using different Google
14 tools, using slideshows with processes that are provided
15 to them, and they are also responsible for attending any
16 syncs that are put on their calendar, generally just
17 being responsive in chats.

18 I think that kind of covers it.

19 Q Sure. No, that's great.

20 You used a lot of terms just now, and -- and we
21 will try to go through hopefully all of those terms here
22 as we -- as we, you know, move through your testimony.

23 So, there's been a reference during this hearing to
24 the term classification Project Process Specialist.

25 Are you familiar with that term?

1 A Yeah. I am not really involved in the creation of
2 these, but I have been asked by my Team Lead previously
3 to just check her work and see if there is anything
4 missing, or if anything looks off. But I believe it is
5 basically a review of all of the work that the Charts
6 Team has done, so I can include things like overall QA
7 Scores for each workflow. It can include Bug ID's for
8 Bugs that we have had to open.

9 Let me know if I should --

10 Q Yeah, let's -- let's. Yeah, stop right there.

11 A Okay.

12 Q Can you tell us some -- can you tell us what a Bug
13 is?

14 A Okay, so a Bug is kind of, I guess, a ticketing
15 system for either errors with the YouTube Music as a
16 platform. So, any one of us can file a report to
17 YouTube, saying, like, "Beyonce's picture is not Beyonce
18 on her channel," or something, you know. The song title
19 is not accurate.

20 Okay, so external people who don't work for Google
21 can file a Bug, essentially, that comes in the form of a
22 ticket. So, it might have like a picture of your
23 reporting is the issue, and then it gets handed down to
24 the specific team who can address that issue.

25 Q Okay.

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1 A It can also be filed internally.

2 So, I am working on a tool, like I -- I have to use
3 a tool to complete my work, and I notice it is not
4 working right, or there is some kind of error, I can
5 file a Bug, and that can kind of be handed up to an
6 engineer or someone who can address that.

7 So, it is basically just a way of alerting people
8 of errors.

9 Q Okay, all right. So, what about the term, "EOD."
10 Do you know what that is?

11 A Yes, EOD is End of Day.

12 Q Okay, and what does that mean in the context of
13 your work?

14 A We fill out an End of Day Form, and it basically
15 accounts for every minute of your day, and how we spent
16 our time, and on what projects, and --

17 Q Okay.

18 A -- how many we completed during that time.

19 Q I believe there has also been prior testimony in
20 reference to the term "workflow." Can you give us a --
21 a working definition of what that is in -- in the
22 context of your work?

23 A Yeah. So like I mentioned, I am on the Charts
24 Team, and so we have maybe seven workflows within that
25 team. So, I guess what that means is, there is like

1 will be working on. It is kind of like drinking from a
2 fire hose. It is a lot of information, but they get all
3 of this, and then we go more specifically into examples
4 in each workflow, so we kind of give them this very
5 general -- or very broad overview of everything, and
6 then this is something that they can reference as they
7 are getting more specific, more specifically into each
8 workflow.

9 Q Okay.

10 MR. TSAO: I will stop the share there for a
11 moment.

12 Q BY MR. TSAO: Okay, I want to talk to you about --
13 about the hiring process, and what you know about it.

14 So, I guess going back to when you were first hired
15 for Cognizant, do you remember that time period?

16 A Yeah.

17 Q Okay, and -- and how did you apply to -- to -- to
18 work for Cognizant?

19 A I was actually referred by a current Cognizant
20 employee.

21 Q Okay, and what position were you seeking at that
22 time?

23 A Music Generalist.

24 Q Okay, and can you just talk us through the
25 application and hiring process that you went through?

1 A Yeah. So, a friend of mine said, "I think you
2 would be a really good fit for this job," that I am
3 doing, and basically working on YouTube Music's app and
4 platform.

5 They asked for my -- if I was interested, I said,
6 "yes," and then they asked me to send them my resume.

7 So they were able to send me a referral, which --
8 so I got like a direct, basically e-mail, with the
9 application in it, and I filled that out.

10 Maybe a few weeks later, I got a call asking to
11 schedule an interview. I did the first interview, and I
12 think -- I think there might have been two interviews.
13 I can't really remember exactly -- one or two
14 interviews.

15 Then I didn't hear anything for a few weeks, and
16 then I got a call --

17 Q Let me -- let me stop you right there.

18 For the interview that you went through, do you
19 know how many people were in on that interview?

20 A There was just one person.

21 Q And who was that?

22 A I believe his name was Anant.

23 Q Okay.

24 HEARING OFFICER GRAY: I hate to interject, but I
25 want to give about a four-minute warning here.

1 So if you get to a good stopping point.

2 MR. TSAO: Sure. Sure.

3 I -- I think after this line of questions, we can -
4 - we can stop.

5 HEARING OFFICER GRAY: Okay.

6 MR. TSAO: Sure.

7 Q BY MR. TSAO: Anant, do you know Anant's last name,
8 by chance?

9 A I think it is like Bafna, or something like that.

10 Q That's okay if you -- if you are not sure.

11 Do you know what title Anant had?

12 A I don't.

13 Q Okay. Let's see.

14 Okay, so after you had your interview with Anant,
15 then what happened?

16 A I received a phone call, basically extending an
17 offer to join the team, and they relayed some
18 information about a potential start date, and -- and
19 information about a background check that I would have
20 to complete. It just kind of introduced me to like what
21 the next process would be, in order to get onboarded.

22 Q Okay. So, was there anything more to eventually
23 getting hired, or was -- what else happened?

24 A Yeah, so I had to complete a background check. I
25 believe it was like a 7-year background check. So I had

1 indicated that we can probably work through these
2 issues.

3 So, I wanted to flag it particularly because, you
4 know, portions of it that were shared were also not
5 particularly relevant to the current joint employer
6 standard, but with that, we can turn it back and proceed
7 with this witness.

8 HEARING OFFICER GRAY: Thank you, Mr. Agenbroad.

9 And, Mr. Tsao, you can continue with questioning
10 your witness.

11 MR. TSAO: Okay, very good.

12 HEARING OFFICER GRAY: All right.

13 MR. TSAO: Thank you.

14 Q BY MR. TSAO: So, Katie, I want to now talk to you
15 about how discipline works at your job, and what your --
16 your understanding is of how it works.

17 So, I guess I will just start by asking, as an SME,
18 are you involved in issuing any discipline to anyone?

19 A No.

20 Q Okay. What about recommending any discipline?

21 A I have never done that.

22 Q Okay. So, I guess, we -- we had a bit of
23 discussion about some of these issues at the beginning,
24 but who -- who do you -- who do you know that you have
25 worked with, or that you are aware of, that is involved

1 with discipline?

2 A Priya and potentially Team Leads.

3 Q Okay. So, that would be Ms. Ramani, that is the
4 Project Manager, and the Team Leads?

5 A Yes.

6 Q And is there anybody else to your knowledge?

7 A Maybe HR, if it is more of a conduct issue.

8 Q Sure. Okay.

9 Are you aware of any other SME's that were involved
10 in recommending discipline?

11 A No.

12 Q Okay. All right. I want to talk to you about what
13 I heard yesterday in yesterday's testimony, the term
14 "Reassignment" or "Realignment." There has been some
15 prior testimony about the ability of SME's to reassign
16 or realign work, and I wanted to talk to you about that,
17 so...

18 Do you understand what I mean when I say "Reassign"
19 or "Realign?"

20 A Yeah, I think so.

21 Q Sure. Well, what -- what do you understand that to
22 mean?

23 A Reassigning work, as needed. I don't know about
24 "realign" though. I am not sure what that means.

25 Q Sure. Well, let's go with "reassign," since you do

1 know what that means.

2 So, what -- what would be involved in a reassigned
3 work?

4 A It could be something like, you know, for instance,
5 some Music Generalists are here today. Maybe I wasn't
6 aware on Monday that they would be in Court on Thursday,
7 and I assigned them work that they will not be able to
8 complete in their absence, so I would reassign that work
9 to another Agent.

10 Q Okay. What about as it relates to workflow? Can
11 the things that happen in workflows be reassigned or
12 realigned?

13 A Yeah. I mean, I -- you could reassign work within
14 any workflow.

15 Q Okay. So, does anybody else have the ability to
16 reassign work?

17 A Yeah, Music Generalists can take work from another
18 Agent and reassign it to themselves. You know, I say in
19 the chat, "Hey, having a rough day. Can't -- you know,
20 don't know if I am going to get through my allotment,"
21 and maybe my co-worker, Sam, is done with he, and he can
22 say, "Hey, I will take ten of yours," and he could just
23 reassign the LDAP to his columns.

24 The Team Lead could go in and reassign work, as
25 needed, and, you know, Priya herself has access to all

1 of the tools and could reassign work, as needed.

2 Q So, can that happen -- so reassigning, it sounds
3 like it happens -- multiple classifications can do that.

4 A Yeah.

5 Q Okay. So, a related question...

6 Not quite reassigning or realigning, but could you
7 ever -- do you ever sub-in or perform Music Generalist
8 work as an SME now?

9 A Yeah, definitely.

10 Last week, for example, there was a holiday and we
11 had two days off. I elected to work on those two days
12 to make a little extra cash, and there was not enough
13 Generalists to complete the work at hand, so then I
14 jumped in and assigned some of the work to myself and
15 completed it.

16 Q And -- and how often would you say something like
17 that happens?

18 A On my team, not very often. You know, if we have a
19 bunch of people out at the same time, or if there is
20 like a very high priority Bug that comes in; maybe the
21 wording is a little weird or there is some kind of issue
22 where the Generalist that I originally assigned it to
23 can't complete it, I might do it. But it doesn't happen
24 very often.

25 Q Are there any rules against doing that? Yeah, are

1 there any rules that would prevent you from -- from
2 jumping in and doing Generalist work?

3 A I think generally I have my own work to do, and so
4 I certainly would not be encouraged to do that, you
5 know, at the risk of not completing my own work.

6 I am kind of more of a on an as-needed basis, but I
7 am not aware of any policy that says that I cannot do
8 that.

9 Q Sure. So, we have talked a bit about your
10 interactions with Music Generalists, Team Leads, you
11 know, your Project Manager. So, I want to now explore
12 whether or not, and discuss with you, whether or not you
13 have interaction with Google employees.

14 Do you have any interaction with the Google
15 employees?

16 A Yes.

17 Q Okay, and so, if you could talk to me about that.
18 What -- what does that look like?

19 A Sure. I have a weekly sync with my full-time
20 employee that I communicate with. So, once a week on
21 Thursdays, typically we meet for 30 to 45 minutes.

22 We have a set agenda that we collaborate on. It is
23 a Google document that we can both add to.

24 She will discuss any trends that she sees with our
25 work. She might introduce a new ad hoc project to us.

1 We can discuss things like overhead capacity for the
2 team; generally things like that.

3 We also communicate in direct -- if I am working --
4 you know, if I have an Agent working on a Bug, and they
5 have asked me for help and I don't know how to help
6 them, I could reach out to my full-time employee
7 directly for their opinion, and say, "Hey, what do you
8 think about this? Should I escalate this to you? Do
9 you have any advice on how to complete this task," and
10 things such as that.

11 Q Okay. So, is it just primarily one Google employee
12 that you are in contact with, or are there a number of
13 employees that -- that you may interact with?

14 A On my team, it is generally one, but sometimes two,
15 yeah.

16 Q Okay. And you mentioned you had another SME on
17 your team; is that right?

18 A Yes.

19 Q Do they also have any interaction with Google
20 employees like you do?

21 A Yes. They interact with the same employees on the
22 same scale, about the same topics.

23 Q Okay. Okay. So, who usually initiates the
24 communication? Is it typically them reaching out to
25 you, you reaching out to them? Is there -- is there a

1 specific way to do that?

2 A Yeah. So the weekly meeting that we have is set by
3 them, and you know, they created the event and put it on
4 our calendar. They do ping us directly quite often, you
5 know, "Hey, what do you use this tool for." "Hey, how
6 do you complete this process," and things like that, and
7 we message them, directly, as well, like, "Hey, we have
8 a question about this," or "Hey, do you think you could
9 hop into a sync real fast to explain this to us?"

10 Q So, is that -- so is the Google employee you
11 interact with, is that someone that you are accountable
12 to?

13 A Umm, I --

14 Q I can rephrase the question.

15 So, it is like, if they reach out to you, you can't
16 just ignore their message or communication.

17 A No.

18 Q Okay. So, is it expected in the course of your
19 work that you're -- that you are going to be in contact
20 and working with a Google employee?

21 A Yes.

22 Q Okay. Okay. I am going to now show you what's
23 been marked as Union's Exhibit 6.
24 (Union/Petitioner's Exhibit 6, marked for
25 identification.)

1 Q BY MR. TSAO: I am going to share my screen once
2 again.

3 So, Katie, do you see my screen?

4 A Yes.

5 Q Okay. Okay, all right. I am trying to capture as
6 much of it in this view we have here.

7 So, do you recognize what we are looking at?

8 A Yes.

9 Q Okay, and tell us what we are looking at.

10 A This is a group chat between, Erin, who is our
11 former Team Lead, Juelan who is a direct full-time
12 Google employee, Chris who is my fellow SME, and myself.

13 Q And --

14 A I -- I'm sorry, go ahead.

15 Q I'm sorry, did I interrupt you? Were you going to
16 say something else?

17 A I was just going to provide context to what we are
18 talking about here.

19 Q Oh, yes. Absolutely.

20 A So she is reaching out to us. So, we are having
21 issues accessing a tool. It is called a Script. We use
22 the Script to populate data in the spreadsheets that we
23 work in.

24 So she is -- we filed a Bug saying we cannot
25 complete this process that's essential to our work.

1 So she is referencing the Bug, and she is asking if
2 we could provide a screenshot for that error message
3 that we are receiving when we try to run this script.

4 So, we weren't there the day she asked. She wants
5 the detailed view of the error message, so we followed
6 up, give her a screen shot, and copied and pasted the
7 error message.

8 Q So, is -- is -- Ms. Brown is the Google employee;
9 is that right?

10 A Yes.

11 Q Okay. I will now flip to the second page of this
12 exhibit, and scroll down here so that you can see.

13 Can you explain what we are looking at in this --
14 on this page?

15 A Yeah, so it is the same group chat between Erin,
16 the former Team Lead, Juelan, the full-time Google
17 employee, my fellow SME Chris, and myself.

18 This time we are again unable to utilize a tool
19 that we need on a daily basis for our workflows, and she
20 is giving us a kind of "work-around" process for gaining
21 access to that tool, so she gives us an outline of steps
22 to take, and has asked us to try it. It worked for
23 Erin, and she asked if we could -- if Erin could take
24 that to the rest of the team and see if it worked for
25 them, as well.

1 Q Is this just a continuation or is this something
2 different than what we were looking at on Page 1?

3 A This is a continuation.

4 Q Okay, and then we will go down to Page 3.

5 A This is also a continuation.

6 Q Page 4?

7 A Also a continuation.

8 Q Okay.

9 MR. TSAO: All right, I will move to admit Union's
10 Exhibit 8.

11 MR. AGENBROAD: No objection.

12 MS. FOX: No objection.

13 HEARING OFFICER GRAY: Hearing no objection,
14 Petitioner's Exhibit 8 is received into the record.
15 **(Union/Petitioner's Exhibit 8, received into evidence.)**

16 HEARING OFFICER GRAY: You can go ahead.

17 Q BY MR. TSAO: Okay, so, Katie, I want to talk to
18 you about holidays. There has been prior testimony
19 about holidays, and what the policy is at Cognizant.
20 So, I guess I will just start by asking, you know, what
21 -- what's your understanding of Cognizant's holiday
22 policy, if there is one?

23 A I -- I am kind of confused about it actually.

24 We have a list of Cognizant holidays, which as a
25 Cognizant employee, I believe we would be entitled to

1 learning about MCO, Music Corp Operations.

2 Q Okay.

3 A That lasts for approximately a week or two. There
4 is a lot of information. You get introduced to the
5 tools, again, kind of very generally. You get
6 introduced to the tools. You get a broad overview of
7 what each team does. You meet the Team Leads for each
8 team. They will present -- usually they will present
9 their training slides, so you will get just this broad
10 overview of what, you know, what is Buganizer and what
11 does -- you know, and how do you use that. What does
12 Corpus Quality do, what do Charts do, what does the
13 Audio Library Team do?

14 So you get kind of a -- a very like -- kind of
15 brief introduction to each team. You complete some
16 knowledge checks throughout this time on the information
17 you have been presented, and then -- at least when I was
18 hired, they were placing people onto multiple teams, so
19 based on like your knowledge checks, you get placed onto
20 a specific team.

21 So, at that time, they were hiring for Corpus
22 Quality and for Charts, and I got placed on the Charts,
23 so the rest of the hiring process moved to Corpus
24 Quality, at which point you begin learning all of the
25 specific details about that team.

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1 Once you move into that phase of training, your
2 training, with just the slide shows for about a week,
3 and then you move into nesting, where you begin actually
4 having hands-on training with the work itself. Nesting
5 is usually done with the Agents. The Agents will
6 complete shadow sessions with the new hires and kind of
7 show them, "Now, this is how I approached my work."

8 Once the Agent -- the new Agent has been in Testing
9 for a week or so, maybe two weeks, then the Agents will
10 start shadowing them, and watching them work, and give
11 them feedback on their technique, and so that whole
12 process lasts about three weeks, at which point they
13 will go into production, and begin officially working
14 with the tools and things themselves.

15 HEARING OFFICER GRAY: One point of
16 clarification...

17 When you say "Agent," I know -- when you say
18 "Agent," are you talking about the Music Generalists?

19 THE WITNESS: Yes, the Music Generalists or Senior
20 Process Executive, I think it has been referred to as
21 both.

22 HEARING OFFICER GRAY: Okay, thanks.

23 Q BY MR. TSAO: So, just want to clarify the nesting
24 period. How -- did you say that was three weeks long?

25 A Yeah, it --

1 Q About?

2 A -- Yeah, it is typically about three weeks, but it
3 can be longer. It is just depending on how well the
4 Agent -- the Music Generalist is kind of clicking with
5 their work.

6 Q Okay. So, during this training period, do the
7 SME's have any role?

8 A Yeah. During the initial week when the Agent is --
9 the Music Generalist, the new hire is being introduced
10 to the overall work of the team, it is typically an SME,
11 but sometimes the Team Lead, who will sit and complete
12 these trainings with them, so they will go through the
13 decks, you know, and do kind of like knowledge checks
14 with them for about a week, and then the SME is also the
15 one coordinating the shadow sessions with the other
16 Music Generalists.

17 Q Okay.

18 A They will begin with their nesting work, as well,
19 so, yeah.

20 Q Okay. Okay. All right.

21 [Brief pause]

22 Q All right, yesterday that -- the Employer
23 introduced and admitted a couple of exhibits related to
24 benefits and the onboarding process, and I wanted to
25 show you these documents and ask you a couple questions

1 Time.

2 Q Okay, and are you paid on an hourly basis?

3 A Yes.

4 Q Okay. Have you ever had to work overtime?

5 A No.

6 Q Do you know if overtime ever happens?

7 A It can happen, yeah.

8 Q Okay, so do you know what the process is to request
9 overtime?

10 A I -- I don't know if we can request to work it, but
11 if there is a circumstance where -- particularly on my
12 team, our -- our busiest day is Friday, so if it is
13 coming to 5:00 o'clock on Friday, and we are not done
14 with our work, we may be asked to stay until it is
15 completed.

16 Q And who -- who would ask you to do that?

17 A Full-time employees, or -- and Priya.

18 Q Do you have the authority to grant yourself the
19 ability to work overtime?

20 A No.

21 Q Okay. And so, the process that you have just
22 described, is that the same for Music Generalists, as
23 well?

24 A Yes.

25 HEARING OFFICER GRAY: Just for clarification, when

1 you said full-time employees or Priya would ask you,
2 full-time employees, what does that mean?

3 THE WITNESS: Specifically Juelan. She is --
4 oversees our project for the day basically, so she would
5 have say as to whether or not we were done with our
6 charts review. So if it is coming to 5:00, and we are
7 not done, she would recommend or suggest that, "Can
8 anyone stay late until it is completed," which then, I
9 believe it would also have to be approved by Priya, and
10 she is actually our direct supervisor.

11 HEARING OFFICER GRAY: Okay, thank you.

12 Q BY MR. TSAO: And just to be clear, you are
13 referring to Ms. Brown, a Google employee?

14 A Uh-huh.

15 Q Okay. What about if you needed a day off; how
16 would you go about requesting that?

17 A We have the Google form that we have to fill out.

18 So you would just put in this Google form, you
19 know, your name, your LDAP, the dates that you want off,
20 you know, whether it is a full day or a half day.

21 You submit that. That information gets populated
22 into a Google sheet, and you will monitor that Google
23 sheet to see whether or not that request has been
24 approved. At which point, when it is approved, then you
25 move into the Cognizant system, HCM, and you submit that

1 MS. FOX: She did. I'm saying and then we got an
2 objection. I hadn't gotten my next question out.

3 HEARING OFFICER GRAY: Okay. I'm going to overrule
4 the objection. I'll allow the line of questioning for
5 now. I think that we're just trying to clear up the
6 recording, but I also think that question has been asked
7 now and answered. So, you may continue, Ms. Fox.

8 Q. BY MS FOX: Thank you. My next question is, Ms.
9 Marschner, in that audio recording that we heard played
10 yesterday in the hearing, Ms. Ramani said that is was
11 Cognizant human resources that would be the challenge
12 for purposes of getting exceptions for people to work
13 from home. And that Google would be fine with that. Do
14 you recall that?

15 A. I don't recall that.

16 Q. Okay. Let's go to minute 2:51 through minute 3:11
17 of Exhibit 14.

18 *[Audio recording - 10 seconds played]*

19 Q. BY MS. FOX: Does that refresh your memory, Ms.
20 Marschner, that Ms. Ramani did, in fact, say that
21 Cognizant HR would not be open to exceptions for
22 individuals who work from home, that Google would be
23 fine with it?

24 A. Yeah, it sounds like that's what she's saying.

25 Q. Okay. Thank you. All right. We can bring down

1 Anant and you aren't quite sure of his last name, Bafna,
2 right? Does that name sound familiar?

3 A. Yes.

4 Q. And you said that he was the one who interviewed
5 you. Anant is a Cognizant employee, correct?

6 A. I'm not certain, but I think so. I don't know.

7 Q. You also testified about you were Google
8 counterparts as you described them, who you interact
9 with. Do you -- the three names that came up were
10 Mehmet, Juelan -- am I say that right? Is it Juelan?

11 A. Juelan.

12 Q. Juelan. And is it Zhual?

13 A. Zeem.

14 Q. Okay. All three of those Googlers with whom you
15 interact have been and were at the time you were
16 interacting with them, your peers or your counterparts
17 at Google, right?

18 A. Yeah, that's how I described them.

19 Q. And when Mehmet, for example, got promoted within
20 Google, he was then replaced with Juelan as your new
21 counterpart to interact with the Google, right?

22 A. Yeah.

23 Q. When you were interacting with Mehmet as your
24 Google counterpart, you understood that he was not a
25 Google manager or supervisor, right?

1 HEARING OFFICER GRAY: Hearing no objection,
2 Employer Cognizant's Exhibit 13 is received into the
3 record.

4 **(Employer Cognizant's Exhibit 13, admitted into**
5 **evidence.)**

6 MS. FOX: Thank you. No further questions for this
7 witness at this time.

8 HEARING OFFICER GRAY: Google, do you have cross?

9 MR. AGENBROAD: I do. It'll be quite limited based
10 on what Cognizant just walked Ms. Marschner through.

11 HEARING OFFICER GRAY: Okay. Go ahead, Mr.
12 Agenbroad, whenever you're ready.

13 CROSS EXAMINATION

14 Q. BY MR. AGENBROAD: All right. Good morning, Ms.
15 Marschner. My name is Aaron Agenbroad and I'm Counsel
16 for Google in this matter. I just have a few questions
17 for you, and apologies for the voice. I'm getting over
18 a bit of a bug.

19 You were asked by your Counsel yesterday regarding
20 I guess distinctions between SMEs versus team leaders.
21 Who at Cognizant could discipline people; do you recall
22 those questions?

23 A. Yes.

24 Q. And, you know, when you were asked who could
25 discipline employees at Cognizant, you identified Priya;

1 do you recall that?

2 A. Uh-huh.

3 Q. And you also identified team leads as being able to
4 discipline people; do you remember that?

5 A. I think I said possibly. I'm not certain that they
6 can either.

7 Q. Okay. So possibly team leads. And then you also
8 indicated that in some instances HR might get involved
9 with discipline; do you remember that?

10 A. Correct.

11 Q. Okay. And all of those people are Cognizant
12 people, correct?

13 A. Correct.

14 Q. Thank you. Then, also, we just walked through your
15 -- well, actually, just jumping to the audio recording
16 briefly. You testified and the that that -- you
17 recorded that conversation between Aaron and Ms. Ramani
18 in or about September of '22; is that right?

19 A. The conversation was between Erin, Priya, myself
20 and Chris Towner and yes, it was September 6, 2022.

21 Q. Okay. Do you -- you know that that was at least
22 eight months after Cognizant's CEO had already issued a
23 email to Cognizant employees directing a return to work;
24 isn't that right?

25 A. I don't recall.

1 at that time.

2 A. At that time it was mostly production work as in,
3 you know, the same duties that generalists are doing now
4 -- the actual work. And the, I believe the quality
5 assessments at least at first were done by Google
6 employees.

7 Q. Okay. And what's your job title now?

8 A. I am an SME, music expert.

9 Q. So you've been an SME your entire tenure; is that
10 correct?

11 A. Yes.

12 Q. Okay. How have your job duties changed over time
13 as an SME?

14 A. Quite a bit as we've grown, taken on more work, I
15 am now primarily responsible for quality assessments of
16 the generalist's work in my specific workflows. I might
17 help with training as I've done almost my entire tenure
18 here as new hires come on and helping with training.
19 Help the team leads put together business reports, give
20 feedback to the agents, answer questions in chat, help
21 make suggestions on training materials.

22 Q. Okay. And who would you make those suggestions to?

23 A. I would make suggestions within the Google training
24 docs. We saw some of them earlier. Those training
25 slide decks are created by Google. We can only view

1 them. We don't have the access to make changes to
2 those, so we'll ask for comment access, and then we can
3 make comments and there's, you know, a bit of a back and
4 forth with the full-time employee and the SMEs making
5 suggestions or asking for an update if material is
6 outdate.

7 Q. Okay. Are those training decks you're referring
8 to, we saw an exhibit that fit Coltrane, is that the
9 exhibit that you were referring to?

10 A. Yes.

11 Q. Okay. And those are the training decks you were
12 just talking about?

13 A. Correct.

14 Q. Okay. And you said you had to ask for comment
15 access. Who would you ask for that access?

16 A. It's unclear who owns each deck, but we would ask
17 our, you know, in my case my full-time employee, my
18 Google point of contact. I would ask him for edit -- or
19 comment access, and he would either give it to us or ask
20 the owner to give it to us.

21 Q. Okay. And just so we're on the same page when
22 we're having our conversations and when you're talking
23 about full-time employee, you're referring to a direct
24 Google employee; is that correct?

25 A. Yes. We like acronyms, FTEs, is our Google

1 counterpart, you know, point of contact.

2 Q. Is that what you typically refer to those folks as,
3 as FTE's?

4 A. Yes, I do. Uh-huh.

5 Q. Okay. All right. And what team do you work on
6 now? We heard a lot about the different teams. What
7 team are you assigned to?

8 A. I work in Corpus Quality.

9 Q. What does that mean?

10 A. At YouTube Music, the Corpus refers to the body of
11 music. So we work with Google tools to make proactive
12 and reactive changes to metadata on YouTube Music.
13 Katie mentioned, you know, if Beyonce's name is spelled
14 incorrectly, our team could help with that. We do
15 quality evaluations of the platform. My team
16 specifically were in the reactive -- we're on the
17 reactive team so we're answering feedback reports,
18 external and internal, any issue with the YouTube Music
19 app we can either triage or help resolve.

20 Q. Okay. So let's talk a little bit about structure
21 and your team. Do you have a team lead for the Corpus
22 Quality team? I'm just going to call it CQ; is that
23 okay?

24 A. Yes.

25 Q. Okay. So you have team leads for your CQ team?

1 A. Yes. It's pretty flexible. I think, you know, for
2 the ease of splitting up the team lead duties like, you
3 know, making sure timesheets are correct and things like
4 that, they just split the, you know, into two teams.
5 But there are many agents who throughout the day might
6 work on those workflows, you know, workflows from both
7 teams.

8 Q. Okay. Does the proactive side and the reactive
9 side do they have their own separate workflows?

10 A. Yes. Let me know if you want me to expand on that.

11 Q. Well, I will ask you a lot more about that, but
12 maybe let's go back to -- I'm getting off track here.
13 Maybe let's go back to when you were initially hired
14 because I want to hear more about -- you said you
15 started working in July 2019. Tell me about what the
16 hiring process was like for you?

17 A. A recruiter reached out to me. I can't remember
18 what site I applied on. There was an email. There was
19 a lot of onboarding kind of from home where we were, you
20 know, taking trainings and filling out paperwork, stuff
21 like that. Then we went into the office. We were given
22 some Cognizant onboarding training, more paperwork, we
23 were getting our equipment, laptops, desks. All of the
24 Cognizant onboarding was given by Anant Bafna. And
25 then, it's been a long time so I'm not clear on exactly

1 you were hired you went in, you had Cognizant training.
2 You mentioned a laptop and a desk. Okay. So, the desk
3 -- tell me about the desk. I'm guessing that means you
4 were in a physical location when you started work?

5 A. Yes. We were at the, I guess, in learning the Go
6 vo -- the Google-owned, vendor operated building on 7700
7 West Parmer Lane. Yeah, we were just kind of assigned
8 Chromebooks, a security key like a little USB that you
9 have to put your fingerprint on. It's a VPN, I guess,
10 and desks in the facility.

11 Q. Okay. Who gave you the Chromebook?

12 A. I think Anant had a hand in distributing them. I
13 remember, yeah, spreadsheets of that he made of like,
14 you know, everyone's asset tag and everyone's access to
15 different tools.

16 Q. Do you know who owned your Chromebook?

17 A. I believe it was Google. We had to -- any
18 equipment that we wanted to order was through Google
19 store.

20 Q. Okay. And what about your access, your VPN key
21 that you mentioned. Who gave that to you?

22 A. I think Anant gave it to us but, again, I think it
23 was provided by Google, and it's only required when
24 trying to access Google platforms.

25 Q. Okay. Do you still use that key?

1 MS. CAMPBELL: Correct.

2 **(Union's/Petitioner Exhibit 16, received into evidence.)**

3 Q. BY MS. CAMPBELL: So I think we've talked about
4 your initial onboarding, your initial training. Do you
5 get ongoing or continuous training in your job as an
6 SME?

7 A. Yes. As new workflows are introduced, Ribotto will
8 also train the SMEs on that and then the SMEs will
9 disseminate the training to the generalists.

10 Q. Okay. Do you get any other kinds of training --
11 periodic training, like, an ethics update or something
12 like that?

13 MR. MARTIN: I'm going to object to this line of
14 training questions. I think it's a waste of time. I
15 think it's not relevant to the joint employer's
16 standard.

17 HEARING OFFICER GRAY: Okay. I'm going to overrule
18 that objection. I do think it's relevant to talk about
19 who is that's training these employees. So, Ms.
20 Campbell, you can continue with your questioning.

21 Q. BY MS. CAMPBELL: Thank you. My question was
22 simply about periodic or ongoing training that you
23 received we don't -- in your position currently?

24 A. Yes. There are regular mandatory Google security
25 compliance and ethics trainings.

1 **(Union's/Petitioner Exhibit 27, received into evidence.)**

2 MS. FOX. Thank you.

3 Q. BY MS. FOX: Okay. Going to back to Union's
4 Exhibit 21.

5 **(Union's/Petitioner Exhibit 21, marked for**
6 **identification.)**

7 Okay. Liana, do you recognize this document?

8 A. Yes. This is a --

9 Q. Go ahead.

10 A. This is a weekly agenda for Corpus Quality's team
11 meetings with Ribotto. Every week, SMEs from Corpus
12 Quality will compile questions for issues. Ribotto will
13 also add to this list and we'll meet on Tuesdays to, you
14 know, clarify, go over this, discuss any updates.

15 Q. Okay. Do you have a meeting where you discuss this
16 document?

17 A. Yes. Every week.

18 Q. All right. Tell me about that meeting.

19 A. Corpus Quality SMEs and team leads plus Ribotto and
20 sometimes Taha will all gather in a Google video
21 conference and go point by point. Like I said, a lot of
22 the time it's the SMEs bringing questions to the table.
23 Each bullet is like a point of discussion. But often
24 Ribotto will update this doc when, you know, an ad hoc
25 is coming in or a new workflow is coming our way. Most

1 recently he updated our training with some new
2 information so he added a bullet here, and we went over
3 that. There's a lot of gray area in our workflows so we
4 have these regular meetings to make sure we're all on
5 the same page and we're disseminating the correct
6 information to agents.

7 Q. Okay. We'd like to move what's marked as Union's
8 Exhibit 21 into the record.

9 MR. DHUPAR: No objection from Cognizant.

10 MR. MARTIN: No objection from Google.

11 HEARING OFFICER GRAY: Okay. Hearing no objection.
12 Petitioner's Exhibit 21 is received into the record.

13 **(Union's/Petitioner Exhibit 21, received into evidence.)**

14 Q. BY MS. CAMPBELL: Okay. Can we move to -- let's
15 mark this Exhibit 23, Clement. Sorry about that.

16 All right. Liana, do you recognize this document?

17 **(Union's/Petitioner Exhibit 23, marked for**
18 **identification.)**

19 A. Yes. This is --

20 Q. And what is it?

21 A. This is some of the many training decks that Corpus
22 Quality uses to train new agents as well as an ongoing
23 resource for their work. These are Google created
24 training decks. Again, we don't have access to make
25 updates to these, but as you'll see by their slightly

1 right?

2 A. Yes.

3 Q. Is that this year?

4 A. I believe so.

5 Q. Okay. So when you received this email, what did
6 you understand Ribotto's instruction to you to be?

7 A. I would take this if I am Laura -- she's
8 responsible for evals -- so that first section, Artist
9 Discography Evals, I would take a look at it and let
10 agents know that Artist Discography, Ribotto has filed
11 some off-cycle QA reviews that you need to go check and
12 acknowledge and correct, and the Artist under merge
13 scrubs that would be Erica's responsibility to
14 disseminate to her team. I believe the agents also
15 receive emails when these errors are flagged in the
16 system. But we actually collaborated with Ribotto to
17 have him flag it to us because sometimes, you know,
18 things can fall through the cracks.

19 Q. Okay. And what is an off-cycle review? What do
20 you mean by that?

21 A. Anything that's not pulled into the sample that the
22 SMEs get. You know, agents may complete 200 items in a
23 week. So the following week in QA, the SMEs will get,
24 you know, we'll see 20 of those. So that leaves 180
25 tasks unreviewed. There are times, again, when we're

1 seeing certain types of errors or it might just be
2 random where from those remaining 180 samples another,
3 you know, 20 will be pulled into a queue for FTE review.
4 So it's kind of like just an additional set of eyes from
5 the FTE to catch anything that was not in our sample.

6 Q. Okay. Thank you. With that, we'd like to move
7 Union's Exhibit 26 into the record.

8 MR. DHUPAR: No objection from Cognizant.

9 MR. MARTIN: No objection.

10 HEARING OFFICER GRAY: Hearing no objection. The
11 Petitioner's Exhibit 26 is received into the record.

12 **(Union's/Petitioner Exhibit No. 26 received into**
13 **evidence.)**

14 MS. CAMPBELL: Ms. Gray, at this time I don't have
15 any further questions for Ms. Hernandez.

16 HEARING OFFICER GRAY: Okay. Cognizant, are going
17 -- do you have cross?

18 MR. DHUPAR: We will have cross. I request that we
19 take a short break here.

20 HEARING OFFICER GRAY: Okay. Yeah, I was going to
21 say depending on the length of time this would probably
22 be a good time for a break. So let's go off the record,
23 please.

24 *[Off the record]*

25 HEARING OFFICER GRAY: On the record. Okay, we are

1 A Yeah, it looks like it.

2 Q And in the upper left-hand corner it reads
3 Cognizant Technology Solutions U.S. Corp. That
4 indicates that Cognizant pays your wages, correct?

5 A Yeah, that's correct.

6 Q And you've never received a paycheck from Google,
7 correct?

8 A No.

9 Q Can you clarify? Have you ever received a paycheck
10 from Google?

11 A I don't believe so.

12 MR. DHUPAR: I'd like to offer Exhibit 19.

13 HEARING OFFICER GRAY: Any objections?

14 MS. CAMPBELL: No objection.

15 MR. TSAO: No objection.

16 HEARING OFFICER GRAY: Hearing no objections,
17 Employer Cognizant's Exhibit 19 is received into the
18 record.

19 **(Employer Cognizant's Exhibit No. 19 received into**
20 **evidence.)**

21 MR. DHUPAR: We can take down Exhibit 19.

22 Q BY MR. DHUPAR: Ms. Hernandez, you may recall in
23 your attorney's examination she asked how often do you
24 talk to Cognizant employees other than SMEs, SPEs, and
25 team leads. Do you remember that question?

1 HEARING OFFICER GRAY: Okay. Now when you did work
2 at that location at 7700 W. Parmer, did anyone have
3 offices or was it a co-working space?

4 THE WITNESS: It was a co-working space, open floor
5 with cubicles.

6 HEARING OFFICER GRAY: Okay. And everyone from an
7 SPE to like Priya would have been working in those
8 cubicles?

9 THE WITNESS: Yes. Priya was not on site with us.
10 Anahn was our point of contact for Cognizant. I'm not
11 sure if there were offices there. He I don't think had
12 a desk on the floor, so I'm not sure where he worked out
13 of, but there were, but there were lots of meeting
14 rooms.

15 HEARING OFFICER GRAY: Okay. And another thing you
16 talked a little bit about was when you were hired there
17 was some discussion about whether you wanted to work --
18 to start work at 8:00 or to start work at 9:00, and the
19 majority of the people chose the 8:00 to 5:00. Who is
20 the they in that discussion? Who had that discussion?

21 THE WITNESS: It was internal. I mean it was like
22 Libby, who is our team lead, and the SMEs that had been
23 hired. I assume Libby was posing this question coming
24 from either Cognizant or Google to give us an option.

25 HEARING OFFICER GRAY: Okay. Did she conduct like

1 a survey of some sort?

2 THE WITNESS: I remember it being a verbal yes or
3 no. There were only nine of us, so it was more
4 manageable.

5 HEARING OFFICER GRAY: Now when they did tell you
6 that hours were going to be til 5:00, were you told that
7 that's -- because that's what a majority of employees
8 wanted or because it was required by Cognizant or Google
9 or someone?

10 THE WITNESS: I think choosing 8:00 over 9:00 was a
11 majority decision, you know, by the workers. But, you
12 know, I think the 8-hour day, 40-hour week schedule was
13 expected by the Employers.

14 HEARING OFFICER GRAY: Okay. And then another
15 thing that we've talked a lot about is this QA review,
16 and we may even have the answer to this, but I'm really
17 trying to make sure I understand it correctly. The
18 samples that are put on to that, those -- do you know --
19 it's my understanding that Google puts those samples on
20 there before they send the spreadsheet to you, correct?

21 THE WITNESS: In Corpus Quality we don't get a
22 spreadsheet, but yes, Google is responsible for loading
23 the samples into the tool that we use.

24 HEARING OFFICER GRAY: Do you know if it's just
25 automatic, like it just automatically pulls samples or

1 HEARING OFFICER GRAY: Thank you. Hello, Jonas.
2 Would you raise your right hand?

3 (Whereupon,

4

JONAS PARKER OWENS

5 having been sworn/affirmed, was called as a witness
6 herein, and was examined and testified via video-
7 conference, as follows:)

8 HEARING OFFICER GRAY: Can you please state your
9 name and spell it for the record?

10 THE WITNESS: Yeah. My name is Jonas Parker Owens,
11 J-o-n-a-s, P-a-r-k-e-r, O-w-e-n-s.

12 HEARING OFFICER GRAY: Thank you. You may go
13 ahead.

14

DIRECT EXAMINATION

15 Q BY MR. TSAO: Jonas, can you tell us where you're
16 employed?

17 A Yeah. I work for You Tube Music Content Operations
18 at Cognizant Technology Solutions.

19 Q Okay. And how long have you been employed there?

20 A I started, I believe, October 29th last year.

21 Q Okay. And what's your current job title?

22 A I'm a music generalist.

23 Q All right. And can you give us some idea of what
24 your duties are as a music generalist?

25 A Yeah. So I personally -- I work on the official

1 artist channel team, so I am on the team who verifies
2 official artist pages. You've seen that Twitter debacle
3 with verification and checkmarks. I give the music note
4 checkmarks typically, yeah.

5 Q Okay. So you just mentioned the official artist
6 channel. That's your team.

7 A Uh-huh.

8 Q And is there a specific, and I might be using the
9 term incorrectly, workflow that you're assigned to or is
10 that a different use of the term?

11 A Yeah. So I don't only work on the official artist
12 channel, so I have a couple of different workflows. The
13 official artist channel main workflow is research, which
14 is -- like I said, I am verifying that everything is
15 correct, nothing is like false and they're trying to
16 make the You Tube page. I also do -- I am currently
17 training in another Buganizer flow which is called
18 Artist Verified Graph, which is a reactive flow as Liana
19 mentioned previously. But basically we just add
20 channels that are requested after they have already been
21 approved and given their checkmarks.

22 Q Sure. So there's been prior testimony and
23 discussion about training, and I wanted to ask you if
24 you have ever had any training roles.

25 A Yeah. I regularly train other generalists, like

1 A It's not as big as CQ, but we have a decently sized
2 team.

3 Q Okay. And so how large is your team?

4 A I want to say it's like the four SMEs, or four or
5 five SMEs, and then like seven or eight generalists, and
6 then the one team lead. I could be wrong by one or two
7 on those.

8 Q Sure, sure. And so that was one team lead that you
9 have?

10 A Jordan Galbreth.

11 Q Very good. So is there any particular SME that you
12 work with more closely or all of them you work with
13 fairly closely?

14 A They all have like different tasks because it's
15 just like a specialization thing. It doesn't always
16 mean anything.

17 Q Sure.

18 A Yeah. I just escalate them to various things
19 depending on what the problem was.

20 Q Sure. Do the SMEs that you work with that you
21 know, do they have any role in issuing discipline?

22 A Oh, no. Not at all.

23 Q Okay. What about the team lead that you work with?

24 A Yeah, Jordan. Jordan would be the one who would
25 handle discipline work, and Priya, and HR will do that.

1 What --

2 A Yeah, he's the FTE for the OAC team, so I feel like
3 he's like commented on our work quality before, but it's
4 not the same. Like Jon regularly QAs my work.

5 Q Okay. So I sort of just want to broaden out the
6 discussion with respect to FTEs to just talk about
7 general interactions with them. Do you have other types
8 of interactions outside of grading with FTEs?

9 A Maybe not generally, but like if I escalate like
10 any issues and they either want clarification or I
11 messed up somehow, that might come back. Like if I
12 identified a string of impersonations, that was
13 escalated to Fred Torphy who asked in an email thread
14 about some insight on to that.

15 Q Sure. And so when you use the term escalate, like
16 what does that mean and how do you do it?

17 A In this particular case, it was just like gathering
18 a bunch of evidence and then bringing it to Fred through
19 one of our SMEs who regularly interact with Fred like on
20 a daily basis.

21 Q Okay. Do the FTEs ever reach out to you because it
22 sounds like when it's being escalated you're reaching
23 out to them? Do they ever reach out to you?

24 A I want to say that Jon Weinman has reached out to
25 me once to clarify a QA issue.

1 Q Okay.

2 A Yeah. But it's not regular, but that's just --
3 there's not -- yeah.

4 Q Sure, okay. All right.

5 MR. TSAO: Next I'm going to show what was
6 previously marked as Union's Exhibit 28. The set of
7 exhibits we're going to be talking about with this
8 witness has previously been circulated a few minutes
9 ago. Is there anyone that hasn't had a chance to see?
10 **(Union/Petitioner's Exhibit No. 28 marked for**
11 **identification.)**

12 HEARING OFFICER GRAY: What number did you say, Mr.
13 Tsao?

14 MR. TSAO: This is Union's Exhibit 28. I believe
15 that's the number we're at.

16 Q BY MR. TSAO: Jonas, is my screen showing?

17 A Yes, sir.

18 Q Okay. So you've seen this before?

19 A Yeah. This is just like the QA or the Q+ email
20 where you get notified after your work has been graded.

21 Q Okay. And so can you just kind of be more
22 specific? Like where did this come from?

23 A Yes. So this was just in my normal LDAP in-box, my
24 Google in-box. It just shows like a Q+ notification.
25 If I had gotten less than 100 percent on this task, I

1 Stop about, but I wouldn't be able to recollect the
2 specifics.

3 Q And Tech Stop helps you with signing on to Google's
4 systems, correct?

5 A Yeah, I guess so.

6 Q Now if you have a broken laptop, meaning physical
7 hardware that is broken, you're aware that the
8 replacement of your laptop is provided by Cognizant,
9 yes?

10 A I'm not aware of that.

11 Q Do you know one way or the other where a
12 replacement laptop would come to you from if you had a
13 broken laptop today?

14 A I would not know.

15 Q You're aware that Cognizant has a system, a
16 computer system and a portal, for ordering hardware,
17 yes?

18 A Vaguely, but I've only ever used the Google store
19 that Liana mentioned.

20 MS. FOX: Let's go ahead and pull up Employer's
21 Exhibit No. 24. This was shared with the parties and
22 with the Hearing Officer and the reporter on the break.
23 Madame Hearing Officer, do you need a moment?

24 **(Employer Cognizant's Exhibit No. 24 mark**

25

1 ed for identification.)

2 You were on mute, but I think I read your lips to
3 say you can see it.

4 HEARING OFFICER GRAY: Yes, thank you.

5 Q BY MS. FOX: All right. Let's take a look at
6 Exhibit No. 24. Let's go all the way down to the bottom
7 first. Sorry. A little bit above -- yes, the blue
8 part. All right. And let's scroll in on this. This is
9 a communication from communicatorinfoatcognizant.com
10 with a notification sent to your Cognizant email that
11 you had had a request rejected by the Cognizant IT
12 resource team for a monitor. Do you see that?

13 A Uh-huh.

14 Q Is that a yes?

15 A Yes.

16 Q And this was in December of 2021, right?

17 A Yeah, according to the date.

18 Q Okay. And does this refresh your recollection that
19 there is a Cognizant system for requesting hardware and
20 that you have used it before?

21 A I guess it is.

22 Q Okay. And here you had requested a monitor from
23 Cognizant as of December 2021, correct?

24 A Yes.

25 Q And then scrolling up to the email immediately

1 above you wrote to Priya then asking for help because
2 the equipment request had been rejected. Do you see
3 that?

4 A Yes.

5 Q And then let's scroll up a little bit further. You
6 followed up with Priya a few months later. It looks
7 like maybe you wanted a further response or hadn't
8 gotten one and so you wrote to Priya that you wanted to
9 check in on your monitor request, yes?

10 A Yes.

11 Q And then let's scroll up above that. Priya
12 responded to you saying that there wasn't approval for a
13 monitor as this team is one that is tagged to -- sorry --
14 - as a team that will be working from office. And this
15 is in February of 2022 and that she has added your
16 information to the team members' list who will get a
17 monitor once there is more clarity on the return to
18 office status. Do you see that?

19 A Yes.

20 Q All right. Is this a true and correct copy of the
21 email exchange between you and Ms. Ramani as well as
22 your December 2021 submission of a request for a monitor
23 from Cognizant systems?

24 A It seems to be.

25 MS. FOX: I'd ask that Exhibit 24 be admitted into

1 the shadow sessions.

2 HEARING OFFICER GRAY: Okay. And then do you ever
3 work overtime?

4 THE WITNESS: I have had the opportunity to, but I
5 personally have not.

6 HEARING OFFICER GRAY: Okay. When you say the
7 opportunity, like you were asked to?

8 THE WITNESS: Yeah. Like the TLs, especially on
9 holidays, will ask if anyone can stay to make sure that
10 we have coverage for all the workflows.

11 HEARING OFFICER GRAY: Okay. But you've never then
12 worked any overtime?

13 THE WITNESS: No, I haven't. Yeah, I like my
14 holidays.

15 HEARING OFFICER GRAY: And then what system do you
16 use to report your time?

17 THE WITNESS: I'm sorry? A clarification.

18 HEARING OFFICER GRAY: Your work time or basically
19 clocking in and clocking out.

20 THE WITNESS: Yeah, I use HCM.

21 HEARING OFFICER GRAY: Okay. And then are you
22 aware of any benefits that the SMEs or team leads may
23 have that you do not? And when I say benefits, I guess
24 I am referring to the general benefits that are usually
25 offered like the 401(k)s, the health and medical, and

1 A Yes.

2 MS. CAMPBELL: We ask that this Union's Exhibit 32
3 be moved into the record.

4 **(Union's/Petitioner Exhibit No. 32 marked for**
5 **identification.)**

6 MR. DHUPAR: No objection.

7 MR. MARTIN: No objection.

8 HEARING OFFICER GRAY: Hearing no objections,
9 Petitioner's Exhibit 32 is received into the record.
10 **(Union's/Petitioner Exhibit No. 32 received into**
11 **evidence.)**

12 MS. CAMPBELL: All right. You can take it down for
13 me. Thank you.

14 Q BY MS. CAMPBELL: All right. Sam, so you found
15 this job posting and you applied back in the fall of
16 2021. Then what happened next?

17 A One or two months elapsed. Apparently, I had been
18 sent emails from Cognizant about it, but I had missed
19 them, but they ultimately ended up calling me, and I
20 answered. And we set up a job interview. I did the job
21 interview.

22 Q Okay. And who did you do the interview with?

23 A So I believe someone -- well, I know someone from
24 Cognizant set up the interview. I don't remember what
25 their job was, but they set up an interview with Libby

1 who used to occupy Priya Ramani's role as the project
2 manager. She conducted the interview.

3 Q Okay. And then after that did you have more
4 interviews? Did you get a job offer?

5 A One other thing that happened is they sent me a
6 little exam. It was like a 100-question exam that
7 challenged me to research music information based on
8 streaming services, and I passed it. Then that was all
9 until I received the job offer.

10 Q Okay. And so I'm assuming -- obviously, you
11 accepted the job offer, right?

12 A Correct.

13 Q Okay. So then tell me once you accepted the job
14 offer and you came on board, what did your initial on
15 boarding look like?

16 A So initially it was through Cognizant. I don't
17 remember with perfect detail what all I did, but I know
18 I received orientation about, you know, benefits and
19 instruction to their like software system. So I learned
20 about the timesheet system and all the kinds of general
21 things you would expect to learn in basic corporate on
22 boarding. And then after that period I began training
23 with Music Content Operations specifically.

24 Q Okay. And how long did the Cognizant on boarding
25 take do you think?

1 HEARING OFFICER GRAY: So, Mr. Regan, have you --
2 do you know if the -- do you receive like a yearly or
3 every six months or something like that performance
4 evaluation that's tied to any type of raise?

5 THE WITNESS: Yes.

6 HEARING OFFICER GRAY: Okay. How often do you
7 receive one of those?

8 THE WITNESS: During my tenure I've received one
9 merit increase and one bonus.

10 HEARING OFFICER GRAY: Was the merit increase tied
11 to like an evaluation that was done and given to you?

12 THE WITNESS: Correct.

13 HEARING OFFICER GRAY: Who gave you that
14 evaluation?

15 THE WITNESS: I believe it was my team lead that
16 had the most say in it. I can't say with certainty.

17 HEARING OFFICER GRAY: Was it like a sit-down
18 meeting, one-on-one, in person?

19 THE WITNESS: That was a component, but I think it
20 was derived from like metrics.

21 HEARING OFFICER GRAY: Okay. And then based off of
22 your rating was how you got your increase or do you know
23 how much? Do you know how the amount of increase was
24 determined?

25 THE WITNESS: I think I was assigned a number.

1 HEARING OFFICER GRAY: Okay. Do you know if any of
2 the SMEs on your team had any input into that
3 evaluation? Do you know?

4 THE WITNESS: I know that they didn't.

5 HEARING OFFICER GRAY: Okay. How do you know that
6 they didn't?

7 THE WITNESS: Because I correspond all the time
8 with one of them, they're like one of my best friends,
9 and I talked to them about it.

10 HEARING OFFICER GRAY: Okay. Who -- can you give a
11 name, please?

12 THE WITNESS: Yeah. Ms. Katie Marschner.

13 HEARING OFFICER GRAY: Okay. And have you ever
14 worked overtime?

15 THE WITNESS: One time. I worked on one holiday.

16 HEARING OFFICER GRAY: Were you asked to?

17 THE WITNESS: No. Our team lead asked our team if
18 anyone wanted to, and I volunteered.

19 HEARING OFFICER GRAY: Did you have to get
20 approval? I mean how did that process work? You just
21 said yes, I'll work it, and then you worked it, or did
22 someone else have to approve you working that?

23 THE WITNESS: Yeah. I just responded to the group
24 message saying yes, I'll do it, and then I showed up,
25 clocked in, and did it.

1 Value can be different, but -- like how can we
2 scale the business, how can we think about improving
3 the product, what, what, what, what we are looking from
4 a consumer standpoint, what does it takes the company
5 during the next 10 years. So, this is what I would
6 deem as value-add activities.

7 Q. Got it. And the assessment of the value-add
8 proposition for the MCO operations was that it did not
9 warrant Google FTE's; is that right?

10 A. Exactly.

11 Q. Do you know where the Cognizant employees working
12 on the MCO project perform their work?

13 A. At this moment, they are working remotely.

14 Q. Do you know how long they've been working
15 remotely?

16 A. Since start of the pandemic.

17 Q. Okay. Prior to the onset of the pandemic, do you
18 know where they were working?

19 A. They used to work from a GOVO, which is called
20 Google Owned Vendor Operating facility.

21 Q. Okay. So -- and that's just G-O-V-O? So, Google
22 Owned Vendor Operated?

23 A. That's right.

24 Q. Okay. And where geographically was that facility
25 located in?

1 A. In Austin, Texas.

2 Q. Okay. Do you know if there were any Google FTE's
3 working out of that Austin facility at all?

4 A. No. GOVO's are only for vendors. FTE's work from
5 a different office altogether.

6 Q. Do you have any understanding of when this group
7 of employees will be returning to a office setting?

8 A. Instead of partnership, Cognizant informed me that
9 they will be moving to a new Cognizant facility in
10 February -- starting February.

11 Q. Okay. And so, this is a Cognizant-owned or leased
12 facility?

13 A. Yes.

14 Q. For Cognizant employees only, to your
15 understanding?

16 A. That's my understanding, yes.

17 Q. And you say Cognizant informed you.

18 Was that a decision, to your understanding, that
19 Cognizant made to return its employees to a standard
20 room Cognizant facility?

21 A. That's right.

22 Q. I want to touch very briefly upon the use of
23 Google email addresses. We heard testimony -- and I
24 know you've been here -- regarding these Cognizant
25 employees being assigned Google email addresses.

1 if it has username and trade google.com, the username is
2 called an LDAP.

3 Q. And are those LDAP's necessary for Google to be able
4 to provide designated access to employees under their
5 workflows?

6 A. Yes, it is.

7 Q. Okay. So, we talked about you being familiar with
8 the process on a number of terms and conditions for these
9 Cognizant employees. I want to talk now about Google's
10 involvement in that, if any.

11 To your knowledge, does Google determine
12 specifically how much any Cognizant employee working on
13 the MCO project is paid?

14 A. No.

15 Q. Does Google determine any specific benefits that any
16 of these Cognizant employees working on the MCO project
17 receive?

18 A. No.

19 Q. Does Google select the benefit plans for any
20 Cognizant employees working on the MCO project?

21 A. No.

22 Q. Does Google, to your knowledge and experience,
23 determine the work schedules of any Cognizant employee
24 working on the MCO project?

25 A. No.

1 Q. Focusing on specific hours, we heard testimony from
2 Ms. Ramani that if an individual employee needs an
3 adjustment to their workhour schedule, to your knowledge
4 and experience, does Google play any role in those sorts
5 of adjustments?

6 A. No.

7 Q. As far as the hiring process for the employees that
8 Cognizant chooses to hire, does Google, to your knowledge
9 or understanding, interview any of those people?

10 A. No.

11 Q. Does Google participate in the selection of which
12 candidates are successful for hire by Cognizant?

13 A. No.

14 MR. AGENBROAD: All right. Can we -- Erin, can you
15 pull up Exhibit 5? This is Union Exhibit 5, please.

16 [Long pause]

17 Q. BY MR. AGENBROAD: All right, Mr. Babu, this is an
18 exhibit that was entered a, a, a few days ago by the
19 Union. It's a, a compilation of a, a couple of images
20 and, and texts.

21 Do you recognize this document?

22 A. THE WITNESS: I do.

23 Q. And what is it?

24 A. This is a training document which outlines process
25 knowledge.

1 basis?

2 A. No.

3 Q. Does Google, to your knowledge, provide broad-based
4 training to all Cognizant employees?

5 A. No.

6 Q. Who does Google, if anybody, train?

7 A. The Cognizant trainers or SME trains the Cognizant
8 employees.

9 If there is a new product or feature that need to --
10 that's being introduced, Google trains the trainer or the
11 SME. But, end of the day, the overall training to the
12 Cognizant employees is managed by Cognizant's trainer or
13 SME.

14 Q. All right. To your knowledge and information, does
15 Google provide any day-to-day work instruction to the
16 Cognizant employees?

17 A. No.

18 Q. Does Google assign any Cognizant employees with
19 specific positions or roles?

20 A. No.

21 Q. We've heard about the workflow, which, again, is a
22 bundle of files.

23 When that workflow pushes out, to your knowledge,
24 does Google -- anybody at Google or Google FTE assign any
25 of those specific files or tasks to any Cognizant

1 Q. And is it fair to say that Google's interest is
2 assessing the overall quality output of Cognizant as a
3 whole on the project as opposed to any individual
4 Cognizant employee working on the project?

5 A. Yes, Google's interest lies whole on the project.

6 Q. Are you -- we heard testimony about another tool
7 called Elixir.

8 Are you familiar with Elixir?

9 A. I'm familiar with that.

10 Q. And what is Elixir? If you could describe that for
11 the Hearing Officer.

12 A. Sure. Elixir is a Cognizant-developed tool which
13 Cognizant implemented for its Google projects to drive
14 employee engagement with their knowledge tests, et
15 cetera.

16 Q. And again, for clarity of the record, Elixir is a
17 Cognizant tool, not a Google tool?

18 A. That is correct.

19 Q. All right. We've also heard testimony about

20 Chromebooks, and whether the Chromebooks are a Google
21 asset or a Cognizant asset.

22 What is your understanding of the current status of,
23 of who has ownership over Chromebooks or whose asset they
24 are?

25 A. The current status is Cognizant owns the assets.

1 Q. Okay. And did that, did that use to be different at
2 some point?

3 A. Google used to provide the Chromebooks audio. Last
4 year, sometime late Q3, early Q4, the transition happened
5 where Cognizant start owning the assets into it.

6 Q. Got it.

7 So, at some point in late 2021, all Chromebooks
8 became Cognizant assets?

9 A. That's correct.

10 Q. Are there, to your knowledge or understanding, are
11 there any Chromebooks that are now issued to Cognizant
12 employees that are a Google asset?

13 A. To my knowledge, no.

14 Q. All right. We'll wrap up with just a couple areas.
15 As far as discipline, though I don't think this is
16 disputed by the Petitioner, but does Google discipline
17 any Cognizant employees based on poor performance?

18 A. No. No.

19 Q. Does Google even have access to Cognizant's
20 performance evaluations of any individual Cognizant
21 employee?

22 A. No.

23 Q. Does Google determine which particular Cognizant
24 employees are terminated from the MCO project?

25 A. No.

1 channels.

2 Q. Thank you. All right. So, so, let's shift gears a
3 little bit and talk about something we've heard
4 referenced in the hearing throughout the time we've been
5 here, and it's been referred to variously, but we'll,
6 we'll call it quality assessment and, and the tool Q+.

7 Are you familiar with the tool Q+?

8 A. I am, yes.

9 Q. What is it used for?

10 A. Q+ is used for quality assessment.

11 So, we have a number of workflows. They're
12 different problem types in those workflows, and we use --
13 you know, Q+ is utilized basically to assess the quality
14 of the work done in those workflows.

15 Q. And can you describe how it works for us?

16 A. Sure. So, there will be a queue set up for a given
17 workflow. The, the tool will take a random sampling or
18 a, a defined sampling that meets certain criteria of all
19 of the items completed in that given queue week over
20 week. It will take that sample and provide it to a team
21 lead or an SME on the Cognizant side. Those folks will,
22 then, assess the quality of the work done by the
23 generalist operators who most generally work in those
24 queues.

25 So, that's the, that's the primary function. And

1 then, there's a calibration stage as well.

2 Q. Can you describe the calibration stage for us?

3 A. Yes. So, the calibration stage is a stage where a
4 random sampling of the QA'ed results from the previous
5 stage are, are sampled and provided for review generally
6 by FTE's here at YouTube, so full-time employees here at
7 YouTube.

8 And basically, we are, you know -- we're utilizing
9 the calibration stage to ensure that like the program and
10 the workflow and the guidance that we've laid out is
11 being defined -- is being applied, rather, as we've
12 defined it.

13 Q. And, and so, just to clarify, then, do you ever
14 perform that, you know, in your role, perform that
15 calibration quality assessment work?

16 A. Yep.

17 Q. How frequently do you do that?

18 A. So, my calibration stages are generally set to run
19 monthly, but I manage a number of workflows. It's a
20 little bit staggered, so I'd say I jumped in there once
21 every two weeks.

22 Q. Okay. And is, is -- when, when you are performing
23 calibration QA, is the purpose to review the quality of
24 work of any individual Cognizant employee?

25 A. No.

1 A. Yes.

2 Q. Okay. So, is this, is this -- just to clarify,
3 then. Is this a QA that you submitted -- a, a
4 calibration QA you submitted for work completed by Jonas
5 Owens?

6 A. Yes.

7 Q. Did you have any interactions with Mr. Owens
8 regarding this QA?

9 A. No.

10 Q. Have you ever had any one-on-one interactions with
11 Mr. Owens?

12 A. No, I've never interacted with him directly.

13 MR. MARTIN: Okay. Can we go to Page 1, please?

14 [Brief pause]

15 Q. BY MR. MARTIN: Are you familiar with this document
16 or this type of document?

17 A. THE WITNESS: Yeah. That looks like the automated
18 email reports that go out after a, a set of items has
19 been reviewed.

20 MR. MARTIN: Okay, thank you.

21 Erin, we can take this down.

22 [Brief pause]

23 MR. MARTIN: Okay.

24 Q. BY MR. MARTIN: So, Mr. Weinman, what happens when a
25 calibration QA gets marked as a, a failure? And I think

1 A. I do, yeah.

2 Q. Okay. And from your perspective, for us, can you
3 please describe basically the, the life cycle of an ad
4 hoc project from, from start to finish?

5 A. Sure. So, first thing is we have an intake form.
6 And so, that intake form will want to know things such as
7 the, the scope of the work, the volume of the work, any
8 supporting documentation, you know, so the actual
9 procedure of how to perform the work, as well as like a,
10 a desired completion date.

11 So, I'll fill out that intake form, I'll hit submit.
12 At that point, a Buganizer ticket is generated and
13 dedicated to for, for MCO ad hocs. I'll take a look at
14 the Buganizer ticket, I'll ensure that I'm set as
15 assignee, I'll make sure that everything looks good and
16 that the intake was successful and everything that needs
17 to be there is there. And then, I will assign it out
18 generally to Ops Manager or Team Lead for somebody at
19 Cognizant to delegate and provide feedback on the desired
20 timeline, any other questions, concerns, that sort of
21 thing.

22 Q. Thank you. Have you ever assigned an ad hoc project
23 to a -- I believe you referred to them earlier as
24 generalists or operators.

25 Have you ever assigned an ad hoc project to a

1 specific Cognizant generalist?

2 A. No.

3 Q. And then, you know -- so, you said that once it's
4 assigned to the, the Project Manager or Team Lead, with
5 marked as you as the assignor, from there, they handle
6 it, they delegate it out.

7 How does an ad hoc project conclude?

8 A. So, generally, that same Team Lead or SME who's been
9 tasked as assignee will respond on the bug, let me know
10 that, you know, the work has been completed. They'll
11 assign that bug back over to me. And at that point, you
12 know, I'll close it out and, and take any high-level sort
13 of insights from the results, you know, perform an
14 analysis really of, of what was provided.

15 Q. Thank you. Okay. We can change, change subjects
16 just slightly, just a, just a couple of more questions
17 for you. I want to talk briefly about hiring and firing.

18 Have you ever interviewed an applicant for
19 employment at Cognizant?

20 A. No.

21 Q. Do you know of anyone at Google who has?

22 A. No. Not offhand, no.

23 Q. Have you ever seen a resumé for an applicant for
24 employment at Cognizant?

25 A. No.

1 also bring in insight saying, "Oh, this person seems to
2 have operated at a far higher speed." So this is in
3 discussion with SPE's, with SME's, and Team Leads.
4 After that is when I propose this to Google.

5 MS. FOX: I would like to ask that Exhibit No. 35
6 be admitted into evidence.

7 MR. AGENBROAD: No objection.

8 MR. TSAO: No objection.

9 HEARING OFFICER GRAY: Hearing no objections,
10 Cognizant Exhibit 35 is received into the record.
11 **(Employer/Cognizant's Exhibit 35, received into**
12 **evidence.)**

13 MS. FOX: Thank you so much.

14 Exhibit 35 can come down.

15 Q BY MS. FOX: Ms. Ramani, we were hearing earlier
16 in this hearing about training being conducted by a
17 Googler named Mr. Ribotto. Do you recall that
18 testimony?

19 A Yes. Ribotto is a Specialist for Quality Team.

20 Q Why was it that Mr. Ribotto was conducting
21 training of Cognizant associates during the time period
22 that was discussed on the record earlier?

23 A Because I had requested it.

24 Q Why did you request it?

25 A Typically, training is conducted by our SME's, and

1 at that time, our Team Lead and the SME's were very
2 stressed. They didn't have the bandwidth to kind of
3 train the team on the new changes that were happening
4 in the team, train new team members who were onboarding
5 onto the team, plus also complete their day-to-day
6 tasks, so I -- based on the feedback that I had from
7 the team, I put in the request formally to Google
8 restart to Sahil and restart to Ribotto and said, "Can
9 you help us this time with training some of the team
10 members?"

11 Q Was it your understanding that this was a bit of
12 an imposition on Ribotto's schedule to ask him to do
13 this?

14 A Yes. We -- we did still go back and forth trying
15 to find the ideal time, day, because he also had to
16 make adjustments to his schedule to train us.

17 Q Did you convey to him that you were grateful to
18 him for changing his schedule to help you out on this
19 one?

20 A He -- he usually likes to partner with us. He is
21 a more hands-on specialist who likes to work, happy to
22 help anyway he can.

23 MS. FOX: Let's go ahead and bring up Exhibit No.
24 37.

25 **(Employer/Cognizant's Exhibit 37, marked for**

1 A Yes. So most of the rubric that we have is always
2 agreed upon mutually, to -- to kind of put it into
3 plain English that we review and we understand. They
4 could also be rubrics that comes to mind that we know
5 the process better than them because there has been a
6 change in the specialist in the Google space, and we
7 have been working on this queues and workflows for the
8 last three years, so they have gone ahead and said,
9 "Why don't you go ahead and propose? Tell me what is
10 it that is critical?"

11 MS. FOX: Let's pull up Exhibit No. 39.

12 **(Employer/Cognizant's Exhibit 39, marked for**
13 **identification.)**

14 MS. FOX: Exhibit 39 is a two-page document that
15 reflects an e-mail dated November 11, 2021. This is an
16 e-mail from Sahil Chopra to Priya Ramani, with a cc: to
17 Taha Habib.

18 Q BY MS. FOX: Just to review, Ms. Ramani, Sahil is
19 your counterpart at Google, right?

20 A Yes, that's correct.

21 Q And who is Taha?

22 A Taha is also a Google employee. He is part of the
23 DS Team.

24 Q In this e-mail does Mr. Sahil-- sorry, Sahil, does
25 Sahil ask you and your team for input on the rubrics in

1 the way that you were just describing a moment ago?

2 A Yes. So we did have some kind of a model there,
3 and they were trying to reassess the quality model that
4 we have, and wanted our feedback. So, in an attempt to
5 do that, as you can see from the e-mail, they also
6 shadow and watch us perform the task, and then they are
7 trying to understand, you know, the rebaseline, and
8 estimate saying, "Okay, this thing is going to take
9 them four minutes to do that," and if you ask them to
10 review it, any less than that, then there are errors
11 that the team can make because of oversight, or in the
12 shadow session, they try to see if any tool is behaving
13 very differently for us, or if I am not able to access.

14 There are a lot of things that go into it, and
15 based on that understanding, they ask for feedback and
16 -- so it is a collaborative effort. We will talk
17 first, sit down together, and review and close it.

18 Q Under "Help Needed," on Page 1, we see some
19 bullets, and in the second bullet it reads, "Could you
20 have the SME's working on these workflow. Take a look
21 at this rubric, and provide additional attributes on
22 which this workflow could be QA'd on."

23 Now, rubric is blue, and it is underlined. Is
24 that reflecting that there was a document linked at
25 that word?

1 A Yes. That would be the original document.

2 Something like what we would've seen in the previous
3 exhibit, and the QA log would have questions and
4 points, that -- that document.

5 Q And is this -- what is your understanding of what
6 Sahil was asking you to do in this bullet-point for
7 that rubric?

8 A So, we already had the rubric that was, you know,
9 being reviewed to see if we can expand the scope or
10 bring in additional changes into the rubric, and in
11 this particular case, we are also trying to see if
12 there is any other new workflows where we have not
13 started or set the quality framework, does the same
14 rubric be brought there and applied, and stuff like
15 that, Basically he is asking feedback on, you know,
16 "Which workflows do we want to consider to be QA'd,
17 based on this?"

18 Q And when he asks if the SME's could provide
19 additional attributes on which this could be QA'd on.
20 What does that mean to ask the SME's to suggest
21 additional attributes?

22 A So, attributes in simple terms meaning expand, or
23 you know, sharpen the scope. So, for example -- so,
24 you might have ten points dedicated to spelling-check,
25 and then, do we want to expand saying, you know, "Do we

1 want to take off five points only," if all of the
2 spelling is in all-caps, or "Is the expelling exactly
3 as put out as the request came, and for example, an
4 artist wants his entire name to be in all-caps, we do
5 all-caps. If somebody says, "No, only use the first
6 name and the last name," the first alphabet to be all-
7 caps, then we -- things like that. So, breaking it
8 down, so spread the scope or reduce the scope.

9 Q Thank you for that.

10 MS. FOX: I am going to ask you, Ms. Ramani, to
11 slow down a little bit, because when we get talking
12 about these things, our Court Reporter is going to have
13 a tough time, but you are doing a great job.

14 Thank you.

15 Q BY MS. FOX: Now, the attributes, does -- when we
16 talk about the attributes, does that include the actual
17 point deductions that would be taken, or is that just
18 talking about the tasks of the item that will be
19 scored?

20 A It can be both. We can also make recommendations
21 in terms of reusing and increasing the points. We can
22 also add more line items, changing the language.

23 Q And does -- do the Cognizant employees have input
24 into the number of points that will be deducted for
25 particular quality issues?

1 A Google needs to be notified of team members doing
2 overtime, but we need approval from Google specifically
3 for billing purposes.

4 So, our billing is handled by the Central Finance
5 Team, and -- and there is a certain set of fixed items
6 that go into an invoice. In the meantime, the billing
7 invoice changes. It needs to be approved both from
8 Google, and there needs to be approval from the
9 Cognizant saying, "This is a valid entry" or "...a
10 valid payment that we are going to be posting in the
11 invoice," so we need to notify.

12 Q Now, if the overtime being worked isn't going to
13 hit an invoice from Google, does Google need to be
14 notified or approve anything?

15 A If anybody is staying in our tools outside of the
16 normal working hours, we let them know so in case there
17 is an audit trail or an audit check, but we don't need
18 approval if Google is not going to be billed, it is not
19 going to be invoiced.

20 Q Let's look at an example of that, Exhibit No. 41,
21 please.

22 **(Employer/Cognizant's Exhibit 41, marked for**
23 **identification.)**

24 **Q BY MS. FOX: All right, Exhibit No. 41 is an e-**
25 **mail chain. Let's go down to the bottom e-mail first.**

1 We see an e-mail from Kedar to you, Ms. Ramani, in
2 October of 2022. In October of 2022, what was Kedar's
3 role?

4 A Kedar was a Team Lead.

5 Q All right, and what was Kedar as a Cognizant Team
6 Lead telling you in this e-mail?

7 A That he would be logging in early on, I'm assuming
8 either a Tuesday and a Thursday or a Monday and a
9 Thursday, and so basically he is notifying me that he
10 is going to be working additional hours, and -- because
11 he is subscribed to some training which needs to be
12 done as part of his role.

13 Q And so, it reflects two hours of overtime will be
14 worked by Kedar in that week. Do I see that correctly?

15 A That's correct.

16 Q All right, and then let's scroll up to the e-mail
17 up above it.

18 You respond, "Approved. Please update botes?"
19 What is botes?

20 A Sorry, spelling mistake. Should be "notes."

21 Q Okay, so, "Please update notes in the timesheet."
22 What are you referring to there with the
23 timesheet?

24 A So, we maintain a common log for all of us, which
25 is at the end of the month, is also shared with the

1 Finance Team that reports saying how many hours I have
2 worked on a particular date. This gets included as one
3 of the -- a back-up document, I would say in the
4 invoice.

5 So I had asked him to update the notes saying, "I
6 did work two hours extra," and the reason for him
7 working.

8 Q And we see somebody named Ameetinder cc:'d. Who is
9 that person?

10 A Ameetinder is the PMO. He is a Cognizant
11 employee, and oversees the billing or invoices that are
12 sent to Google.

13 So I notified him saying there is overtime coming
14 up, because he would see in the web clock or the HCM,
15 he will see that this is also in -- the manual sheet --
16 the update, and I didn't want him to bill it to Google,
17 because this is not something that they want to bill
18 Google for.

19 Q And you say, "You will see it in our" -- what is
20 the word that you used. Ameetinder would see it in
21 what? Where would he see this come across in the
22 system?

23 A So, any overtime also goes into our timesheet.
24 The web clock tool that they use to punch in and punch
25 out, and that is what the team is referring to -- HCM

1 timesheet.

2 Q So the Cognizant system, the Cognizant timekeeping
3 system.

4 A Cognizant timesheets; that is correct.

5 Q Okay. And was this overtime ever submitted to
6 Google for approval?

7 A No. It -- it does not have to go to Google
8 because it is not billed. It is paid for by Cognizant.

9 Q And if a Cognizant associate ends up working
10 overtime in Austin, that Google isn't going to be
11 billed for, does the same rule apply that Google
12 doesn't need to approve it?

13 A That's correct. There could be situations where,
14 let's say we have a backlog, and I have to clear that
15 work, so I would -- we would authorize our team members
16 to work additional hours to clear that, we would notify
17 Google because we are going to be hanging around the
18 system, outside the working hours but no approval
19 needed because it is not going to be in the billing.

20 Q And why is it important for Google to be notified
21 that Cognizant associates will still be on the system
22 outside of expected hours?

23 A In case Google is conducting any audits, any
24 unauthorized LDAPs still being active in the system,
25 and there are checks that run.

1 Q Is that part of Google's security protocol, in
2 your experience?

3 A Yes.

4 MS. FOX: I would like to ask that Exhibit No. 36
5 be admitted -- I'm sorry, not 36...41 be admitted into
6 the record.

7 MR. AGENBROAD: No objection.

8 MR. TSAO: No objection.

9 HEARING OFFICER GRAY: Hearing no objection,
10 Cognizant's Exhibit 41 is received into the record.
11 **(Employer/Cognizant's Exhibit 41, received into**
12 **evidence.)**

13 MS. FOX: Thank you.

14 All right, we can take that down.

15 Madam Hearing Officer, may I have a quick moment
16 to consult with my colleagues?

17 HEARING OFFICER GRAY: Yes. Let's go off the
18 record.

19 *[Off the record]*

20 HEARING OFFICER GRAY: Back on the record.

21 MS. FOX: Thank you.

22 We have no further questions of this witness at
23 this time.

24 HEARING OFFICER GRAY: All right. Thank you.

25 Petitioner, do you have any questions for this

1 A Okay.

2 Q Ms. Ramani, do you see my screen?

3 A Yes.

4 Q Okay, and this SOW I think was previously
5 identified and it has been admitted into evidence as
6 Employer's Exhibit 12.

7 Are you familiar with Section 6 - Staffing, and
8 are you familiar with this first line here that I have
9 highlighted, that -- well, you tell me, what does it
10 say?

11 A It is basically says Google's recommendation for
12 optimal ratio in terms of how many SPE's or how many
13 SME's or how many Team Leads would they think we should
14 have on this particular workflow for us to be in the
15 position to complete or workflows are taken.

16 Q Okay. Now, I want to go to the next page now.

17 So, can you -- can you tell me what the lines that
18 I have highlighted, what -- what does that mean?

19 A So this is Google's proposal to us in terms of
20 they believe we should have a Trainer and a Quality
21 Analyst, that we should have one for every twenty
22 SPE's, one Team Lead for every fifteen, and --

23 Q Okay, and -- okay, so those are the ratios -- you
24 are saying the recommended ratios; is that right?

25 A Yes, because on ground, we have higher levels than

1 that.

2 Q Okay. So, I want to focus your attention on this
3 last paragraph -- not last, but the paragraph that I
4 have highlighted, and I am going to read that to you.

5 "In the event supplier seeks to change these
6 staffing ratios to reflect industry standard ratios, as
7 the staffing under this SOW changes, it may raise this
8 in discussions with Google, in accordance with changed
9 control process."

10 Did I read that correctly?

11 A Yep.

12 Q Okay. So, what do you understand that to mean?

13 A So, it is basically telling that Cognizant
14 reserves the right to go back to Google and re-
15 negotiation, say, for this workflow, the ratio that you
16 have proposed does not seem to be viable, is not
17 working, and we would like to change.

18 Q Okay. So, it provides here that a discussion with
19 Google needs to take place?

20 A Yes.

21 Q Okay.

22 [Brief pause]

23 MR. TSAO: All right, that's all I had, Ms.

24 Hearing Officer.

25 HEARING OFFICER GRAY: Google, did you have any

CERTIFICATE OF SERVICE

I am a citizen of the United States and employed in Los Angeles, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 515 South Flower Street, 25th Floor, Los Angeles, California 90071.

On December 21, 2022, I served the foregoing document electronically filed with the Region:

POST-HEARING BRIEF BY RESPONDENT COGNIZANT TECHNOLOGY SOLUTIONS U.S. CORPORATION

on the interested parties by electronic service as follows:

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x VIA EMAIL:

The email was transmitted to the email addresses listed above on December 21, 2022. The email transmission was complete and without error.

□ VIA U.S. MAIL:

I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice such sealed envelope(s) would be deposited with the U.S. postal service on December 21, 2022 with postage thereon fully prepaid, at Los Angeles, California.

I declare under penalty of perjury under the laws of the United States that the above is true and correct.

Executed on December 21, 2022, at Los Angeles, California.

/s/ Ankush Dhupar

Ankush Dhupar

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16**

ALPHABET WORKERS UNION – CWA,
LOCAL 1400

and

COGNIZANT, GOOGLE LLC /
ALPHABET INC.

Case No. 16-RC-305751

**RESPONDENTS GOOGLE LLC AND ALPHABET INC.'S
POST-HEARING BRIEF**

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INTRODUCTION

After four days of hearing, testimony from eight witnesses, and over 600 pages of exhibits, it is clear that neither Google LLC (“Google”) nor Alphabet Inc. (“Alphabet”) have *any* direct or immediate control over any of the essential terms and conditions of employment of the petitioned-for unit. The evidentiary record makes abundantly clear that Google and Alphabet certainly lack the “*substantial direct and immediate control*” required for a finding that Google “substantially affects matters relating to the employment relationship” between Cognizant and its employees as required for a finding of joint-employer status under the NLRB’s final rule.¹ 29 C.F.R. § 103.40 (emphasis added). As the party asserting joint-employer status, the Union bears the burden on this central issue. *See* 29 C.F.R. § 103.40(a); *Joint Employer Status Under the National Labor Relations Act*, 85 Fed. Reg. 11184, 11227 (codified at 29 C.F.R. § 103.40); *Hobbs Oberg Mining Co.*, 297 NLRB 575, 586 (1990). The Union has wholly failed to meet its burden here and, from the hearing record, the Region can only conclude that Cognizant Technology Solutions U.S. Corporation (“Cognizant”) is the sole employer of the employees in the petitioned-for unit.²

Specifically, there is no evidence that Google determines the wages for any Cognizant employee, the benefits provided to any Cognizant employee, or the work schedule of any Cognizant employee. Further, the record evidence demonstrates that Cognizant alone instructs its employees in their day-to-day roles, issues their performance appraisals, and assigns them specific

¹ Despite naming Alphabet as a joint employer in this matter, Petitioner elicited no evidence whatsoever regarding Alphabet, including but not limited to its relationship with the petitioned-for unit, and Alphabet should therefore be dismissed from this matter. In light of the record, this brief focuses on the joint-employer allegation as to respondent Google.

² While this matter also involves an issue regarding the scope of the petitioned-for unit (*see* Board. Ex. 2 at 64) respondents Google LLC and Alphabet Inc. are not direct or joint employers of Cognizant’s employees and therefore cannot – and do not – take a position on the bargaining unit issue.

tasks. The record also shows that Google does not solicit, recruit, interview, or play any role in the selection of the Cognizant employees, and similarly has zero role in their discipline or termination.

The touchstone of the Board’s 2020 rule, which governs this matter, is whether finding a joint-employer relationship would promote “meaningful collective bargaining.” 85 Fed. Reg. at 11204. Finding a joint-employer relationship in this case would do the opposite. Because Google does not exercise (or even possess) control over any of the essential terms and conditions of employment of the petitioned-for unit, Google would not be able to participate in bargaining at all, much less in a “meaningful” way. As has been made clear from the start, Google was improperly included in the Union’s representation petition, and should be dismissed from this case.

FACTUAL BACKGROUND

Google is a global technology company specializing in internet-related services and products. (Board Ex. 2 at 64.) Its YouTube Music Content Operations (“MCO”) department is responsible for data quality and coverage to ensure that YouTube music “is the most complete premium offering in the world.” (Transcript (“Tr.”) at 548:3-8.)³ As it does with various projects, Google determined that certain services supporting its MCO department did not warrant a Google employee resource and rather were appropriate for outsourcing. (Tr. at 527:10-20.) Google outsourced these associated workflows to Cognizant, the employer in this case. (Tr. at 527:10-528:10.) Google and Cognizant are parties to a contract (the “Statement of Work” or “SOW”), pursuant to which Cognizant provides Google with specific, limited services related to MCO. (Er. Ex. 12 at 253-76.) The Statement of Work is the only relevant document governing Cognizant’s

³ The exhibits in this matter were shared by the court reporter as a single PDF file, in which many of the documents were not marked for identification by a particular exhibit number. This brief references exhibits by party and number, as well as by PDF page in the document sent by the court reporter.

work supporting YouTube MCO,⁴ and it outlines services and deliverables to be provided by Cognizant, for which Google agrees to pay monthly invoices. (*Id.*) It clarifies minimum guidelines regarding staffing ratios, service levels, escalation procedures, training, and hiring metrics. (*Id.*) Importantly, the SOW does **not** provide Google with any direct or indirect control over the wages, benefits, hours of work, hiring, discharge, discipline, supervision, or direction of any individual Cognizant employee. (*Id.*)

Pursuant to the SOW, Cognizant is responsible for various “workflows,” which are delivered by Google via spreadsheets containing “files that need to be worked on and projects that need to be done.” (Tr. at 194:23-195:2 and 324:4-7.) One such workflow is “Buganizer,” which enables Cognizant, through its employees assigned to the MCO contract, to resolve “bugs,” i.e., user reports for errors with YouTube Music as a platform. (Tr. at 193:14-16.) When a “bug” is filed, it gets “handed down to the specific [MCO] team who can address that issue.” (Tr. at 193:20-24.) Cognizant generalists work off of a “queue” in chronological order, which is “first come/first served.” (Tr. at 408:13-16.) In other words, Cognizant generalists assign specific Buganizer tasks to themselves. (*Id.*) They are supervised by Cognizant employees. (Tr. at 190:3-20 and 534:14-535:5.) Cognizant employees also complete “ad hoc projects” outside the scope of general day-to-day MCO operations. (Tr. at 555:20-24.) When an “ad hoc” project arises, a Google employee submits an intake form, which includes a basic description of the work. (Tr. at 556:7-10.) Once submitted, a “ticket” is generated, and delegation of the project to any particular Cognizant employee is left solely to Cognizant. (Tr. at 556:18-557:2.) Google only touches the project again

⁴ Cognizant and Google are also parties to a Master Services Agreement (“MSA”). (*See* Er. Ex. 12 at 253 (“This SOW is issued under the Master Services Agreement between Google Inc. and Cognizant Technology Solutions U.S. Corporation dated January 15, 2015”)). In practice, the MSA does not govern the work performed by Cognizant in support of YouTube MCO, and it is thus irrelevant to this case. (*See* Tr. at 617:20-23.)

after it has been completed by Cognizant. (Tr. at 557:7-14.) A Cognizant Team Lead informs Google of project completion, and the Google employee will “close it out, and take any high-level...insights from the results.” (Tr. at 557:12-14.)

Cognizant employees assigned to the YouTube MCO contract have been working from home since Spring 2020 due to the COVID-19 pandemic. (Tr. at 528:14-16.) Prior to the onset of the pandemic, they worked out of a Google-owned, vendor-operated (“GoVo”) facility in Austin, which was dedicated and occupied solely by multiple vendors. (Tr. at 528:17-23.) At no point did any full-time Google employees work out of this facility. (Tr. at 529:2-5.) On December 21, 2021, the CEO of Cognizant announced plans for a company-wide return to office mandate. (Er. Ex. 9 at 242.) While its return to office plans have developed over time, Cognizant eventually determined – on its own – that its employees supporting YouTube MCO would return to in-person work on February 6, 2023. (Tr. at 22:7-9.) Those employees – including the petitioned-for unit – will not return to the GoVo they previously worked out of, but will instead return to a Cognizant-owned, Cognizant-operated facility on that date. (Tr. at 529:8-16.)

Pursuant to the SOW, and in practice, Cognizant is the sole employer of the employees in the petitioned-for unit. Cognizant posts job openings, selects applicants for consideration, interviews the applicants, and chooses which individuals to hire and staff on the YouTube MCO project. (Un. Ex. 1-14A at 7; Un. Ex. 32 at 25-27; Er. Ex. 13 at 277; Tr. at 27:1-28:9 and 108:12-109:9.) Once hired, Cognizant onboards the employees staffed on the MCO project. (Er. Ex. 4 at 192-231; Tr. at 28:10-25.)

Additionally, Cognizant sets and pays the wages of its employees. (Er. Ex. 8 at 239-41; Tr. at 43:12-16, 43:22-44:14 and 109:10-19.) While Google – like many companies that engage vendors – requires Cognizant to meet or exceed certain compensation standards (Un. Ex. 1 at 1),

Cognizant decides specifically what to pay its employees who work on the Google contract and sets the individual compensation levels for all of them (Tr. at 44:15-45:11.) Indeed, Cognizant chooses to pay its employees substantially more than the minimum standards set by Google. (Tr. at 75:12-16.) Likewise, Cognizant provides and administers comprehensive benefits to all of its employees, which remain the same regardless of which Cognizant client they are servicing. (Er. Ex. 2 at 55-80 and Er. Ex 3 at 81-191; Tr. at 20:18-21:1) These benefits include, *inter alia*, medical coverage, dental and vision, income protection, health savings accounts, flexible spending accounts, and 401K retirement savings. (Er. Ex. 2 at 57; Tr. at 32:18-23.) Cognizant **alone** determines those benefits, who will provide them (e.g. Blue Cross), and the benefit levels, premiums, company-matches, and other terms associated with those plans. (Tr. at 76:7-77:4.)

With respect to the work performed on the YouTube MCO contract, Cognizant alone determines its employees' work schedules. (Tr. at 110:2-111:2.) And while Google provides workflow spreadsheets to Cognizant (designating tasks that need to be completed pursuant to the contract), Cognizant alone assigns these tasks to specific employees, and Cognizant alone assesses and evaluates its employees on their performance. (Tr. at 111:3-18, 132:5-9, 155:10-23, 492:5-9 and 498:1-16.) When a Cognizant employee underperforms or violates a Cognizant policy, Cognizant alone disciplines the employee. (Tr. at 38:5-11 and 227:22-228:7.) Similarly, Cognizant alone determines whether to terminate an individual's employment or whether to remove an employee from a client project. (Tr. at 46:9-14 and 47:13-17.) Even if Google were to request a Cognizant employee be removed from the YouTube MCO project, Cognizant would not be required to comply with the request. (Tr. at 46:18-47:4.) And when Cognizant does decide to remove an employee from a particular project, he or she is placed on Cognizant's "deployable bench" before being assigned to another client project. (Tr. at 25:14-26:8.) While on the

deployable bench, Cognizant employees are still considered active employees and are still paid their salary and benefits. (Tr. at 26:6-12 and 46:5-8.) Accordingly, even if a Cognizant employee were to stop working on the MCO project, their employment with Cognizant would continue and their wages and benefits would remain uninterrupted. (Tr. at 25:20-26:12.)

By contrast, Google has no direct or immediate control over any essential term or condition of employment of any employee in the petitioned-for unit. Specifically, Google has no control over the employees' wages, benefits, hours of work, hiring, discharge, discipline, supervision, or direction. (Tr. at 531:11-532:13, 533:24-534:2, 534:14-535:5 and 537:15-538:7.)

PROCEDURAL HISTORY

On October 21, 2022 the AWU ("Union") filed a representation petition with Region 16 of the National Labor Relations Board. The petition named Google and Cognizant as joint employers. Google filed its Statement of Position on November 15, 2022, emphasizing that it is neither a direct nor joint employer of any employee in the petitioned-for unit and thus should be dismissed from the petition. (Board Ex. 1(f) at 50-52.) Counsel for the Union served Google with a subpoena *duces tecum* on November 16, 2022 and a subpoena *ad testificandum* on November 18, 2022. Google filed a Petition to Revoke both subpoenas on November 23, 2022.

A hearing took place from November 29, 2022 through December 5, 2022. On December 5, 2022, before it presented its rebuttal case, and pursuant to Board authority,⁵ Google submitted an oral motion to dismiss. (Tr. at 511:8-519:13.) The Regional Director denied Google's motion because he did not "have the entire record before him for consideration," but noted that this denial did "not prevent [Google] from raising this issue at the close of hearing or in their briefs." (Tr. at 523:20-22.) At the conclusion of its rebuttal case, Google renewed its motion to dismiss. (Tr. at

⁵ See 29 C.F.R. § 102.65(a); see also NLRB Case Handling Manual, Part 2, Representation Proceedings § 11225; NLRB Guide for Hearing Officers § II.G.4(d).

640:6-20.) Again, “because the Regional Director [did] not have the entire record in front of him for consideration,” the motion was denied. (Tr. at 643:2-5.)

The entire record is now before the Regional Director for consideration. The Union has not offered any evidence supporting its contention that Google is a joint employer of the petitioned-for unit, and therefore a motion to dismiss Google from the petition is ripe.

ARGUMENT

Under the Board’s governing standard, Google is not a joint employer of Cognizant’s employees. There is no evidence that Google possesses or exercises the “substantial direct and immediate control” over any of the eight essential terms and conditions of employment set forth in the standard: wages, benefits, hours of work, hiring, discharge, discipline, supervision or direction. *See* 29 C.F.R. § 103.40(b). To the contrary, the record makes clear that Google takes no part in setting Cognizant employee wages or benefits, or in their hiring, discipline or discharge processes. And the record further makes clear that Google plays no role in their day-to-day schedules, direction, or supervision. Google was inappropriately dragged into this petition and the record evidence underscores that the only proper response is to now dismiss the company from this matter.

A. Legal Standard

Under the Board’s current standard:

An employer . . . may be considered a joint employer of a separate employer’s employees only if the two employers share or codetermine the employees’ essential terms and conditions of employment. To establish that an entity shares or codetermines the essential terms and conditions of another employer’s employees, the entity must possess and exercise such substantial direct and immediate control over one or more essential terms or conditions of their employment as would warrant finding that the entity meaningfully affects matters relating to the employment relationship with those employees.

29 C.F.R. § 103.40(a).

The eight “essential terms and conditions of employment” include wages, benefits, hours of work, hiring, discharge, discipline, supervision, and direction. 29 C.F.R. § 103.40(b). While “indirect and reserved control” can be relevant to the joint-employer analysis, *it is only relevant to the extent it supplements and reinforces* “direct and immediate control.” 85 Fed. Reg. at 11209.

In issuing the current standard, the Board sought to “foster predictability and consistency regarding determinations of joint-employer status.” 29 C.F.R. § 103.40(a); 85 Fed. Reg. at 11228. Specifically, the Board emphasized the importance of the “substantial” qualifier, stating:

Meaningful bargaining would be impaired if the final rule dispensed with a substantiality requirement, since the requirement ensures that only those entities **who meaningfully affect matters relating to the employment relationship are present at the bargaining table.**

Id. at 11204 (emphasis added).

The AWU bears the burden of establishing a joint-employer relationship. *See* 29 C.F.R. § 103.40(a) (the party asserting the existence of a joint-employer relationship bears the burden of proof on the issue); 85 Fed. Reg. at 11227 (same); *Hobbs Oberg Mining Co.*, 297 NLRB at 586 (same). To meet its burden, the AWU must prove that Google exercises “such substantial direct and immediate control” over the petitioned-for unit that it “meaningfully affect[s] matters relating to the employment relationship.” 29 C.F.R. § 103.40(a). The AWU has wholly failed to meet this burden. The record in this case – including 600 pages of exhibits, and testimony from Cognizant’s witnesses, Google’s witnesses, and even the Union’s own witnesses – demonstrates that Cognizant *alone* controls each and every essential term and condition of employment of the petitioned-for unit.

B. Google is not a Joint-Employer Under the Board’s Final Rule

1. Google does not determine the wages of employees in the petitioned-for unit.

To have direct and immediate control over wages, an entity must “actually determine[] the wage rates, salary, or other rate of pay.” 29 C.F.R. § 103.40(c)(1). An entity does not exercise direct and immediate control over wages by “entering into a cost-plus contract (with or without a maximum reimbursable wage rate).” *Id.* Moreover, under the Board’s joint-employer standard, it is not evidence of direct (or even indirect) control for a party to a contract to require their counterparty to agree to certain business practices – such as requiring a vendor to comply with minimum wage laws and pay standards. *See* 85 Fed. Reg. at 11203 (noting that “standards set by contract” or “required by government regulation” do “not count as even **indirect** control of essential terms and condition”) (emphasis added); *see also Container Transit*, 281 NLRB 1039, 1056 (1986) (collecting cases and concluding that control stemming from governmental requirements does not implicate joint-employer status); *Checker Cab Co.*, 273 NLRB 1492, 1492-93 (1985) (same).

The record makes clear that Cognizant alone determines and pays the wages for employees in the petitioned-for unit. (Er. Ex. 8 at 239-41; Tr. at 43:12-16, 74:9-11, 109:10-19 and 401:6-8.) Indeed, the Union’s own witnesses testified that they are paid directly by Cognizant (Er. Ex. 8 at 239-41 and 286; Tr. at 43:24-44:14, 399:2-6, 401:2-8 and 498:1-9), and the record evidence reflects that Cognizant pays the wages of all its employees regardless of the contract a particular employee is assigned to. (Tr. at 43:17-21.) When Cognizant makes an offer of employment to a candidate, it has already determined his or her rate of pay. (Tr. at 109:10-19.)

Google plays no role in the compensation of Cognizant employees in the petitioned-for unit. (Tr. at 558:20-25.) The fact that Google’s “US Wages & Benefits Standards” document⁶ requires Google vendors to pay their employees at least \$15 per hour in accordance with minimum wage laws is not evidence of even indirect control under the joint-employer standard, much less the type of direct and immediate control necessary to establish joint-employer status. *See* 85 Fed. Reg. at 11203; *see also Container Transit*, 281 NLRB at 1056. Moreover, Cognizant has the ability to exceed this standard and, in fact, consistently does so in its compensation decisions, and it alone sets the wage rate of each individual employee in the petitioned-for unit. (Tr. at 43:12-16, 44:15-18, 74:9-11, 109:10-19 and 401:6-8.)

2. Google does not determine the benefits provided or offered to employees in the petitioned-for unit.

Likewise, Google has no direct or immediate control over the benefits provided to Cognizant employees. Under the Board’s standard, substantial direct and immediate control over benefits includes “selecting the benefit plans (such as health insurance and pension plans) and/or level of benefits provided.” 29 C.F.R. § 103.40(c)(2.)

The record evidence overwhelmingly demonstrates that Cognizant controls every aspect of employee benefits, including the selection of benefit providers, benefit plans and benefits levels. (Er. Ex. 2 at 55-80, Er. Ex 3 at 81-191, Er. Ex. 22 at 293; Tr. at 20:18-21:1.) Cognizant provides its employees – including those supporting YouTube MCO – with medical coverage, dental and vision, income protection, health savings accounts, flexible spending accounts, and 401K retirement savings. (Er. Ex. 2 at 57; Tr. at 32:18-24.) Cognizant also provides extensive materials to its employees as part of its benefits overview sessions. (Er. Ex. 2 at 55-80 and Er. Ex 3 at 81-191; Tr. at 30:22-31:3 and 33:4-8.) The uncontested testimony of Cognizant’s Human Resources

⁶ (Un. Ex. 1 at 1.)

leader made clear that Cognizant determines the benefits, which companies will provide them, the benefit levels (including premiums, co-pays, etc.) and their specific terms (including company match levels for the 401k). (Tr. at 32:18-33:2, 36:23-37:11 and 75:24-77:4.) By contrast, Google plays no role whatsoever in identifying the healthcare providers of Cognizant employees, setting healthcare premiums or copays of Cognizant employees, selecting the 401K provider of Cognizant employees, or determining the terms of Cognizant employees' 401K plans. (Tr. at 76:7-77:4 and 531:15-21.)

Like its minimum wage standards, Google's threshold requirements for contractor benefits related to parental leave and education assistance do not establish direct and immediate control. *See* 29 C.F.R. § 103.40(c)(2); *see also* 85 Fed. Reg. at 11203. Moreover, the record evidence establishes that Cognizant independently provides benefits that go beyond the minimum standards requested by Google. (Tr. at 41:21-24.) And even if it did not, any amendment to employee benefits would be determined and paid for by Cognizant alone. (Tr. at 66:9-12 and 66:21-22.) The Union, therefore, has not established – and cannot establish – that Google “**actually determines** the fringe benefits to be provided or offered” to Cognizant's employees. 29 C.F.R. § 103.40(c)(2) (emphasis added); *see also Laerco Transp. & Warehouse*, 269 NLRB 324, 326 & n.7 (1984) (under direct and immediate control standard, adopting certain requirements related to health and welfare benefit coverage pursuant to a contract does not establish joint-employer status); *RVT Maintenance*, 30 NLRB AMR 40056, No. 24-CA-9104 (Div. of Advice Nov. 26, 2002) (finding no joint-employer status where an entity provided “additional, incidental benefits” to subcontractor's employees pursuant to cost-plus contract).

3. Google does not determine the hours of work of employees in the petitioned-for unit.

To establish that Google exercises sufficient control over Cognizant employees' work hours, the Union must show that Google "actually determines [their] work schedules or the work hours, including overtime." 29 C.F.R. § 103.40(c)(3). Importantly, under the Rule, an entity "does not exercise direct and immediate control over hours of work by establishing an enterprise's operating hours or when it needs the services provided by another employer." *Id.*

Cognizant determines the specific schedules of its employees supporting YouTube MCO. (Er. Ex. 41 at 336-38; Tr. at 110:2-22.) Google does not set or influence the work hours or schedules of any Cognizant employees. (Tr. at 531:22-536:6, 555:11-21); *see also* (Tr. at 110:23-111:2) ("Q. Does Google or YouTube have any input or influence into those decisions you've just described regarding adjusting hours or schedules, either short term or long term? A. No".) Likewise, Cognizant *alone* makes decisions with respect to overtime and employee requests for time off. (*Id.*; *see also* Tr. at 540:19-23 ("Q. Okay. Does Google have to give approval of that overtime before it's actually worked? A. Cognizant just gives us a heads-up; no approval from our end".)) And the general working hours for Cognizant employees in the petitioned-for unit (Monday through Friday, 8:00 a.m. to 5:00 p.m.) were determined exclusively by Cognizant.⁷ (Tr. at 265:24-266:1, 406:15-407:11 and 616:21-22.) While the SOW contains language regarding working hours (Er. Ex. 12 at 260), such a contractual provision does not mean that Google "actually determines" the petitioned-for unit's hours of work under the Board's rule. 29 C.F.R. § 103.40(c)(3). But even if the SOW's language were probative of joint-employer status (which it

⁷ Indeed, the Union's own witnesses testified that Cognizant determined these operating hours based on the results of an employee vote. (Tr. at 357:9-13.)

is not), the hours set by Cognizant are inconsistent with those agreed to with Google in the SOW. (Er. Ex. 12 at 260.)

Moreover, even the limited facts suggesting that Google sets some deadlines for work to be completed by Cognizant under the contract are likewise not evidence of joint-employer status under the Board's rule. *Compare* (Tr. at 294:12-14) ("Q. And for any time limits that Bugs need to be completed by, who sets that? A. Google.") *with* 29 C.F.R. 103.40(c)(3) ("[a]n entity does not exercise direct and immediate control over hours of work by establishing...when it needs the services provided by another employer.")

4. Google is not involved in hiring decisions regarding employees in the petitioned-for unit.

Google plays no role in the recruitment, selection, interview, or hiring of Cognizant employees. It is Cognizant that "actually determines which particular employees will be hired and which employees will not" through its own robust recruiting and onboarding processes. 29 C.F.R. § 103.40(c)(4); *see* (Tr. at 27:3-28:6.) First, Cognizant's recruiting team works with the relevant manager (a Cognizant employee) to draft a job description. (Tr. at 27:9-11.) The job is then posted to Cognizant's careers website. (Tr. at 27:11.) The recruiting team then screens applicants and forwards potential candidates to the hiring manager, who selects candidates to interview and ultimately to hire. (Tr. at 27:11-16.) Clients of Cognizant, such as Google, play no role at any point in this process. (Tr. at 27:23-28:9 and 557:18-25.)

Both Cognizant and Union witnesses confirmed that Google plays no role with respect to the hiring of employees for positions within the petitioned-for unit. For example, when asked who makes the specific hiring decisions for Cognizant employees supporting YouTube MCO, Priya Ramani responded, "It'll be me and I would sometimes perform a panel with the Team Leads. So together, we would decide on certain candidates, **but it's always Cognizant.**" (Tr. at 109:1-5)

(emphasis added).) Union witness Katie Marschner testified that she had no contact with Google during her hiring or training process: after applying online, a Cognizant recruiter reached out to her; her only interview was with a Cognizant employee; and, she received her offer letter from Cognizant. (Tr. at 223:18-22, 320:4-6, 353:17-18 and 354:18-22.)

Language in the SOW (Er. Ex. 12 at 260-61) outlining minimum staffing criteria does not support subjecting Google to joint-employer liability. *See* 29 C.F.R. § 103.40(c)(4) (“An entity does not exercise direct and immediate control over hiring by requesting changes in staffing levels to accomplish tasks or by setting minimal hiring standards”). Indeed, the SOW is clear that Cognizant “is ultimately responsible for hiring qualified personnel to be trained to meet performance targets, using their industrial expertise.” (Er. Ex. 12 at 275.) Cognizant *alone* determines which individuals to hire and staff on the YouTube MCO project. (Un. Ex. 2 at 7-11 and Un. Ex. 32 at 25-27; Er. Ex. 13 at 277-82; Tr. at 27:1-28:9 and 108:12-109:9.) And once hired, Cognizant *alone* onboards the employees staffed on the MCO project. (Er. Ex. 4 at 192-231; Tr. at 28:10-25.)

5. Google is not involved in discharge decisions regarding employees in the petitioned-for unit.

Cognizant is the only entity to “actually decide[] to discharge” any Cognizant employees, 29 C.F.R. § 103.40(c)(5), and Cognizant alone has authority to terminate the employment of a Cognizant employee. (Tr. at 46:9-14 and 114:3-13.) The decision to remove a Cognizant employee from a project is also made solely by Cognizant. (Tr. at 46:18-47:4) These decisions are made after extensive internal investigations and input from various departments within Cognizant. (Tr. at 38:12-39:7 and 114:14-115:11.) Clients such as Google are not involved in Cognizant’s internal investigative process. (Tr. at 115:12-15.) When Cognizant decides to remove an employee from a particular project (but not terminate their employment), the employee is placed

on Cognizant's "deployable bench" before being assigned to another account. (Tr. at 25:14-26:8.) While on the deployable bench, Cognizant employees are considered active employees. (Tr. at 46:5-8.) They are still paid and receive benefits from Cognizant. (Tr. at 26:6-12 and 46:5-8.) Even if Google were to request that a Cognizant associate be removed from a project, Cognizant is not required to agree. (Tr. at 46:18-47:4.) Furthermore, removal from a Google assignment would not oblige Cognizant to terminate their employee. Cognizant instead determines whether to place the individual on their "deployable bench" with no interruption to the employee's wages and benefits. (Tr. at 25:20-26:12.)

At the hearing, the Union identified two specific employees who were terminated by Cognizant as purported "evidence" that Google plays a role with respect to employee discharges. (Tr. at 140:23 and 142:1.) But the Union's effort failed as the unequivocal testimony made clear that Google did not play a role with respect to either discharge decision, and both of the employees would be eligible for another Google project if they were on Cognizant's deployable bench. (Tr. at 140:23-141:18 and 142:5-143:1.) Regarding the termination of Erik Finley, Cognizant alone identified a violation of its policies, investigated his conduct, and made the discharge decision. (Tr. at 142:1-23.) Google was not at all involved in Mr. Finley's termination. Regarding the termination of Robert Sanchez, Google merely alerted Cognizant to a security leak. (Tr. at 141:10-15.) Providing such notice to Cognizant does not create a joint employer relationship with Google. *See* 29 C.F.R. § 103.40(c)(5) ("An entity does not exercise direct and immediate control over discharge by bringing misconduct or poor performance to the attention of another employer that makes the actual discharge decision.")

6. Google does not discipline employees in the petitioned-for unit.

Substantial direct and immediate control over discipline requires that an entity "actually decide[] to suspend or otherwise discipline" the relevant employees. 29 C.F.R. § 103.40(c)(6).

Here too the weight of the evidence bends against a finding of joint employer status as Google has no role in disciplining Cognizant employees. Cognizant controls each and every aspect of the disciplinary process for its employees: Cognizant has a Code of Ethics that applies to all of its associates (Er. Ex. 4 at 215; Tr. at 37:17-19), Cognizant has policies regarding “associate conduct and data security” (Tr. at 37:20-22), and when a Cognizant employee violates these codes, policies, and regulations, Cognizant alone is responsible for disciplining them. (Tr. at 38:1-11); *see also* (Tr. at 111:19-22) (“Q. Who decides whether a Cognizant MCO associate will be disciplined in the event there is a concern that a Cognizant associate violated a policy? A. Cognizant decides.”) Cognizant also administers progressive corrective action plans and performance improvement plans. (Tr. at 49:15-24.)

These Cognizant practices apply with equal force to its employees supporting YouTube MCO, for whom Cognizant alone determines disciplinary measures. (Tr. at 38:5-11 and 227:22-228:7.) Indeed, Union witness Katie Marschner testified that the only individuals involved in the discipline of Cognizant employees are Team Leads, Priya Ramani, and “maybe [Cognizant] HR” -- all of whom are Cognizant employees themselves. (Tr. at 227:22-228:7.) When one of these employees is placed on a performance improvement plan, the Team Lead or Priya Ramani is responsible for assessing performance. (Tr. at 50:10-14.)

No witness testified that Google plays any role in deciding or issuing discipline for any employees in the petitioned-for unit. *See, e.g.*, (Tr. at 537:15-18 and 554:14-20); *see also* (Tr. at

113:24-114:2) (“Q. Does Google or YouTube get involved in any way in that process that you’ve just described as associate discipline? A. No.”)⁸

7. Google does not supervise employees in the petitioned-for unit.

To establish that Google exercises substantial direct and immediate control over supervision, the Union must prove Google “issu[es] employee performance appraisals” or “actually instruct[s]” Cognizant employees “how to perform their work.” 29 C.F.R. § 103.40(c)(7). Google does neither.

First, it is undisputed that Cognizant alone issues performance appraisals for its employees supporting YouTube MCO. (Tr. at 50:17-20 and 555:7-10.) Google does not even have access to the performance evaluations of individual Cognizant employees. (Tr. at 537:19-22.) And any argument that the “calibration stages” of quality assessments are equivalent to performance appraisals is fatally flawed because the purpose of the “calibration stage” is not for Google to assess the output of any individual Cognizant employee, but rather for Google to assess “the overall quality output of Cognizant as a whole on the project.” (Tr. at 536:2-5.) Further, calibration scores do not impact the discipline, compensation, or termination decision for any individual Cognizant employee. (Tr. at 554:14-555:10.) Even when a Cognizant employee is notified of an error at the calibration stage, he or she has no direct interaction with the Google employee that submitted the quality assessment. (Tr. at 553:7-12); *see also* (Tr. at 554:10-13) (“Generally, ... we anticipate at that point that team leads or SME’s will then...pass down whatever relevant guidance to make sure corrections are submitted.”)

⁸ Even if Google were to play a role in the disciplinary process by bringing misconduct or poor employee performance to Cognizant’s attention, this would not be probative of joint-employer status. *See* 29 C.F.R. § 103.40(c)(6) (“An entity does not exercise direct and immediate control over discipline by bringing misconduct or poor performance to the attention of another employer that makes the actual disciplinary decision, by expressing a negative opinion of another employer’s employee, or by refusing to allow another employer’s employee to access its premises or perform work under a contract”).

Second, with respect to work instructions, Cognizant alone instructs its employees “how to perform their work.” 29 C.F.R. § 103.40(c)(7); (Tr. at 534:14-17.) “An entity does **not** exercise direct and immediate control over supervision when its instructions are limited and routine and consist primarily of telling another employer’s employees what work to perform, or where and when to perform the work, but not how to perform it.” 29 C.F.R. § 103.40(c)(7) (emphasis added); *Island Creek Coal Co.*, 279 NLRB 858, 864 (1986) (instruction as to what work to perform “at a given time or location” did not establish joint-employer relationship); *see also Laerco*, 269 NLRB at 326 (entity’s day-to-day instruction of employees did not establish joint-employer relationship because the instruction was “routine in nature”); *TLI, Inc.*, 271 NLRB 798, 799 (1984) (daily communication with employees alone did not establish joint-employer relationship because it was “both limited and routine”).

Therefore, to the extent the Union contends that *routine* workflow spreadsheets (Un. Ex. 1-14A at 18-22) establish Google’s supervision over the petitioned for unit, it is wrong. *See Island Creek*, 279 NLRB at 864. Indeed, the purpose of workflow spreadsheets is to deliver a bundle of projects and tasks to a YouTube MCO workflow by providing a list of tasks Google needs completed under its contract, not to assign any *specific* task to any particular employee in the petitioned-for unit. (Tr. at 132:5-9.) The workflow spreadsheets are “limited and routine and consist primarily of telling [Cognizant’s] employees what work to perform.” 29 C.F.R. § 103.40(c)(7); *see also Laerco*, 269 NLRB at 326; *TLI*, 271 NLRB at 799. They do not establish substantial direct or immediate control. For the same reason, Google’s assignment of “ad hoc projects” to Cognizant under the parties’ contract does not establish supervision because Google does not instruct employees on “how to perform” these projects. 29 C.F.R. § 103.40(c)(7); *see also Island Creek*, 279 NLRB at 864; *Laerco*, 269 NLRB at 326; *TLI*, 271 NLRB at 799.

Moreover, once an ad hoc project is created and relayed to Cognizant, it is Cognizant, and Cognizant alone, that determines which individual Cognizant employee will be assigned that project. (Tr. at 490:19-21 and 556:22-557:6.)

Finally, only Cognizant provides day-to-day training to its associates supporting YouTube MCO. Any training documents provided by Google to Cognizant employees are related to “process knowledge,” i.e., how to use Google tools in conjunction with the MCO contract. (Tr. at 532:24-533:23.) These training materials do not provide day-to-day work instructions. (Tr. at 533:24-534:2.) As a matter of practice, Google does not train Cognizant employees supporting YouTube MCO. (Tr. at 534:3-5.) Rather, Google “trains the trainers”—in other words, it trains the Cognizant trainer that will ultimately pass down the knowledge to Cognizant employees on the MCO assignment. (Tr. at 534:6-13.) Moreover, guidance documents issued to employees are not sufficient to establish control over supervision. *In re Airborne Freight Co.*, 338 NLRB 597, 612 (2002) (applying the direct and immediate control standard and finding that providing “operations manuals” which set procedures for another entity’s employees does not establish joint-employer status); *see also* Fed. Reg. at 11205 (declining to include “training” as an essential term or condition, despite multiple suggestions from commentators).

Board precedent requires the Union to demonstrate that Google exercises far greater control over supervision than exists here. *See, e.g., Island Creek*, 279 NLRB at 864 (no joint-employer relationship even when the alleged joint employer instructed employees as to what work to perform, when to perform the work, and where to perform the work); *TLI*, 271 NLRB at 798 (no joint-employer relationship even when the alleged joint employer instructed the hiring entity’s employees on a **daily basis**); *Laerco*, 269 NLRB at 326 (no joint-employer relationship even when the alleged joint employer provided day-to-day work instructions).

8. Google does not direct employees in the petitioned-for unit.

Finally, Cognizant *alone* assigns its employees their individual work schedules, positions, and tasks. (Tr. at 93:17-20, 94:11-21, 155:10-23 and 534:18-535:2); *see also* 29 C.F.R. § 103.40(c)(8) (“An entity exercises direct and immediate control over direction by assigning particular employees their individual work schedules, positions, and tasks.”) Google, by contrast, does not have any control over the work schedules, positions, or tasks of Cognizant employees. *See* 29 C.F.R. § 103.40(c)(8) (“An entity does **not** exercise direct and immediate control over direction by setting schedules for completion of a project or by describing the work to be accomplished on a project.”) (emphasis added). Indeed, there was no testimony at the hearing to the contrary. Instead, the hearing record reflects that Google employees do not assign specific tasks to specific Cognizant employees (Tr. at 556:25-557:2) and, *at most*, delegate workflows to Cognizant Team Leads, who assign tasks to specific individuals. (Tr. at 155:19-23; *see also* Section B7, *supra*.) And, as discussed above, Google does not determine the work schedules or hours of Cognizant employees. (*See* Section B3, *supra*.) The Union offered no evidence demonstrating that Google determines the individual work schedules, positions, or tasks of any Cognizant employees supporting YouTube MCO.

9. Facts regarding the relationship between Google and Cognizant unrelated to the essential terms and conditions are irrelevant to joint-employer status.

Under the Board’s joint-employer rule, an entity cannot be found to be a joint employer unless it exercises *substantial direct and immediate* control over one or more of the eight enumerated essential terms and conditions of employment: wages, benefits, hours of work, hiring, discharge, discipline, supervision, and direction. *See* 29 C.F.R. § 103.40(b). Evidence of indirect control, contractually reserved control, or control over mandatory subjects of bargaining unrelated to the eight essential terms and conditions is relevant “only to the extent it supplements and

reinforces evidence of the entity’s possession or exercise of direct and immediate control over a particular essential term and condition of employment.” 29 C.F.R. § 103.40(a); *see also* 85 Fed. Reg. at 11209. In other words, where (as here) there is no evidence of direct and immediate control over any of the essential terms and conditions of employment, evidence of indirect or contractually reserved control is irrelevant. *See id.*

Moreover, all of the record evidence in this case shows that Google does not even have indirect or reserved control over any of the essential terms and conditions of employment for individuals in the petitioned-for unit, much less such substantial direct and immediate control required to find a joint-employer relationship. To the extent that the Union – as it did during the hearing – contends that elements of Google’s relationship with Cognizant that go beyond the essential terms and conditions of employment are probative of joint-employer status, the Union’s arguments are fatally flawed.

For example, at the hearing the Union spent hours asking its witnesses questions about Cognizant’s decision to return to the office (“RTO”). *See, e.g.*, (Tr. at 144:16-145:1 and 334:3-23.) The RTO decision is not relevant to the joint-employer inquiry here because, even if Google *did* make the RTO decision for employees in the petitioned-for unit, that decision would be unrelated to whether Google exercises direct and immediate control over wages, benefits, hours of work, hiring, discharge, discipline, supervision, or direction. *See* 29 C.F.R. § 103.40(b). In any event, the evidence presented at the hearing proves that Cognizant alone made the RTO decision. (Er. Ex. 9 at 242-45; Tr. at 53:22-54:2, 116:13-117:6, 144:16-145:1 and 539:16-25.) The Cognizant employees working on the MCO project learned about the RTO decision from Cognizant, not Google. (Tr. at 501:10-15.) Cognizant’s September 6, 2022 internal meeting between Priya Ramani, Erin Laihengue, and Katie Marschner took place over eight months after

Cognizant – through its CEO – already announced a company-wide RTO initiative and involved Ms. Ramani updating Ms. Laihengue and Ms. Marschner on a request *Cognizant* made to Google regarding coding of security concerns related to ongoing projects in light of Cognizant’s own RTO initiative. (Un. Ex. 14 and 14A at 58-71; Er. Ex. 9 at 242-45.)

The Union also spent substantial time soliciting testimony from Cognizant employees about the ownership of their work computers (“Chromebooks”). *See, e.g.*, (Tr. at 264:20-265:15 and 355:11-19.) But the ownership status of Chromebooks is likewise irrelevant to the joint-employer inquiry here because it has no bearing on whether or not Google exercises direct and immediate control over one or more of the eight essential terms and conditions of employment. 29 C.F.R. § 103.40(b); *see also Airborne Freight*, 338 NLRB at 598-99 (2002) (under direct and immediate control standard, entity was not joint-employer where, *inter alia*, it owned the facilities and equipment used by the other entity). Further, even if computer ownership was relevant to the current joint-employer standard, all existing Chromebooks used by Cognizant employees supporting YouTube MCO are Cognizant assets. (Tr. at 149:19-20, 150:2-6, 536:22-25 and 538:10-13.)

Finally, the Union repeatedly questioned witnesses regarding the use of “@google.com” email addresses provided to Cognizant employees supporting YouTube MCO. *See, e.g.*, (Tr. at 332:13-16, 344:6-345:12.) It is true that Cognizant employees who use Google’s systems – like all contractor employees – must do so using a “@google.com” account. (Tr. at 530:4-12.) A “@google.com” account, however, does not give an individual unrestricted access to Google systems, people, or features. (Tr. at 530:13-19.) Rather, an “@google.com” account is necessary to access the project-based work performed by Cognizant and other outside contractors. (Tr. at 530:4-12.) Most importantly, the use of “@google.com” accounts has no bearing on whether

Google exercises direct and immediate control over wages, benefits, hours of work, hiring, discharge, discipline, supervision, or direction. 29 C.F.R. § 103.40(b); *Airborne Freight*, 338 NLRB at 602 n. 4 (no joint-employer relationship where, *inter alia*, employees were required to use “data input devices” owned by the putative joint employer). The Union’s focus on these red herrings is probative of nothing and does not support a joint employer finding under the governing standard.

C. The Totality of the Circumstances Shows That Google is not a Joint-Employer

Under the Board’s rule, joint-employer status must be “determined on the totality of the *relevant* facts in each particular employment setting.” 29 C.F.R. § 103.40(a) (emphasis added). The totality of the relevant facts in this case establish that Google is not a joint employer of employees in the petitioned-for unit: Google neither possesses nor exercises any substantial direct immediate control over any of the essential terms and conditions of employment. 29 C.F.R. § 103.40(d). Indeed, past Board decisions applying the “direct and immediate control” standard have refused to find joint-employer status under circumstances where the putative joint employer exercised a *greater* degree of control over essential terms and conditions of employment than Google does here. *See, e.g., Airborne Freight*, 338 NLRB at 597-98 (2002) (holding two entities were not joint-employers despite one entity engaging in “pervasive domination of the [other entity’s] operations,” owning the facilities and equipment used by the other entity, having onsite management at the other entity’s facility, and negotiating with the other entity over the wage rates of the employees at issue); *Island Creek*, 279 NLRB at 864 (holding no joint-employer relationship where alleged joint employer consistently told employees what specific area to work in and gave them routine work instructions); *TLI*, 271 NLRB at 799 (holding no joint-employer relationship even when the alleged joint employer instructed the hiring entity’s employees on a daily basis,

participated in two bargaining sessions with the hiring entity and the union); *Laerco*, 269 NLRB at 326 (holding no joint-employer relationship despite the fact that the alleged joint-employer provided direction on trucking services and attempted to resolve minor problems prior to getting the hiring entity involved). Because the Union cannot establish that Google has sufficient control over **any** of the essential terms and conditions of employment, Cognizant and Google cannot possibly be joint employers under the current Board standard.

CONCLUSION

The Union has wholly failed to meet its burden and its joint-employer allegations remain without merit. As such, Google should be dismissed from the petition.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned, an attorney, affirms under penalty of perjury that on December 21, 2022, he/she caused a true and correct copy of Google LLC and Alphabet Inc.'s Post-Hearing Brief in Case No. 16-RC-305751 to be electronically filed using the National Labor Relations Board's internet website with a copy sent via electronic mail to the following:

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**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16**

Cognizant; Google, LLC/Alphabet, Inc., as joint
employers,

Employers,

and

Alphabet Workers Union-Communication Workers
of America, Local 1400

Petitioner.

Case 16-RC-305751

PETITIONER'S POST-HEARING BRIEF

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INTRODUCTION

Pursuant to 29 C.F.R. § 102.66, Petitioner Alphabet Workers Union-Communication Workers of America, Local 1400 (“Petitioner” or “the Union”) seeks to represent a unit of all Music Generalists¹ and Subject Matter Experts² (collectively referred to as the “MCO employees”) jointly employed by Cognizant Technology Solutions and Google, LLC/Alphabet, Inc., based from the employers’ facilities in Austin, Texas. Bd. Ex. 2. The record substantiates both Google’s status as a joint employer and the appropriateness of the petitioned-for unit.

First, as the evidence presented at the hearing demonstrates, Google exerts direct and immediate control over significant employment conditions affecting the MCO employees. In fact, Google proudly considers MCO employees to be part of “Google’s extended workforce,” setting minimum standards for those workers’ wages, benefits, paid time off, etc. *See, e.g.*, U. Ex. 1; Tr. at 69. Cognizant is simply the “supplier of Google’s extended workforce.” U. Ex. 1. As it specifically relates to the MCO project, Google assigns tasks to the MCO employees, prescribes the manner and means of performing the work in minute detail, and sets various aspects of the employees’ hours of work. What’s more, Google and Cognizant co-determine a number of additional employment conditions, including employee benefits, discipline, staffing levels, and hiring criteria. Google’s significant role in determining MCO employees’ terms and conditions of employment is only reinforced by the significant potential control rights that it reserves. This more

¹ During the course of the hearing, “Music Generalists” were also referred to as “Senior Process Executives,” “SPEs,” or “Agents.” In general, “Generalist” is the term used by Google, whereas SPE is usually only used by Cognizant management. The terms, however, are interchangeable. For purposes of consistency, employees in this role will be exclusively referred to as “Music Generalists” or “Generalists” in this brief.

² Some employees bear the title “Process Specialist.” That title is simply an “alternative name” for the SME title; the two positions are otherwise identical. Tr. at 123. For purposes of consistency, employees in this role will be exclusively referred to as “SMEs” in this brief.

than suffices to establish Google's status as a joint employer. And neither Cognizant nor Google presented evidence sufficient to refute this showing. Given its substantial role, Google must have a seat at the bargaining table—any collective bargaining would be entirely frustrated and frankly futile, with only Cognizant present, given Cognizant's relinquishment of control over some terms and conditions of employment to Google, and requiring Google's sign-off on others.

Second, neither Cognizant nor Google produced evidence at the hearing to refute the Union's presumptively appropriate petitioned-for unit.³ The evidence proves just the opposite: both SMEs and Generalists must be included in the same bargaining unit because both positions largely operate as two sides of the same coin, performing functions that go largely hand-in-hand with the other. Functional similarities aside, both positions are beholden to the same workplace policies, the same supervisors, and enjoy largely the same terms and conditions of employment—all underscoring the appropriateness of the petitioned-for unit. The record, moreover, provides no indication that SMEs fall within the scope of the Act's supervisory exclusion.

Accordingly, the Region should conclude that Google is a joint employer of the petitioned-for unit and that the petitioned-for unit is appropriate. The Region should then direct a mail ballot election.

³ As of December 16, 2022, Counsel for Respondent Cognizant contacted the Union to express that Cognizant has decided not to contest the inclusion of SMEs with Generalists in the petitioned-for unit. Because that concession has not been made on the record, Petitioner continues to address the issue.

FACTUAL BACKGROUND

I. Cognizant and Google's Operations

Cognizant is a fortune 200 company, with about 350,000 employees worldwide. Tr. at 20. Cognizant performs “project-based work” for its clients, meaning it contracts with various companies to provide support for projects that the client delegates. Tr. at 23.

Beginning in 2019, Cognizant entered into a contract, known as the “Statement of Work” (“SOW”), with Google to complete work on a project called “Music Content Operations – Music Content Research” (the “MCO”). Un. Ex. 44. The main objective of the MCO project is to ensure that music content is available and approved for the YouTube Music platform. Tr. at 21. Accordingly, workers manage virtually all aspects of the YouTube Music platform. Tr. at 189. The project hinges on two critical roles to service the YouTube Music operation: Generalists and SMEs. Broadly speaking, Generalists are tasked with fixing various problems that arise on the YouTube Music platform, and SMEs work to fix higher-priority problems and assist the Generalists with their work.

Many aspects of the relationship between Google and Cognizant and the operations of the MCO are narrowly circumscribed by the SOW.⁴ The SOW purports to operate based on a “maximum total cost,” assigning a dollar value to the employees’ hourly work and expecting

⁴ The SOW incorporates by reference a document called the “Master Services Agreement,” which “take[s] precedent over conflicting terms in this SOW unless the parties expressly agree in this SOW to supersede specific provisions of the MSA.” U. Ex. 44 at p. 1. Cognizant and Google refused to produce this document in response to the Union’s subpoena. Petitioner, at the hearing, requested that the Hearing Officer direct Cognizant and Google to produce this document, but the Hearing Officer overruled the request. Subpoena Rec. Tr. at 8, 31–32. Because the Master Services Agreement, in fact, supersedes the SOW, and the SOW sets various terms and conditions of employment and the nature of the Google and Cognizant’s relationship, the Petitioner maintains that the MSA is presumptively relevant to the joint employer inquiry and should have been produced.

payment for work performed. But it goes far beyond setting a basic framework for an arms-length business arrangement. It also sets a number of the MCO employees' terms and conditions of employment, including, but not limited to: staffing levels, language requirements, the service locations, hours of operations, training, payment for each worker, ability to work overtime, resources, background checks, the nature and scope of the work. U. Ex. 44. And it underscores the power dynamic between Google and Cognizant—Cognizant cannot alter many terms set by the SOW without Google's blessing. Since the ratification of the initial SOW, Cognizant and Google have entered into seven (7) amendments to the contract in two calendar years, which extend the duration of the project and refine a number of the terms and conditions of the initial agreement, including new staffing ratios and redefined services and service levels. U. Ex. 44; *see also* U. Ex. 41 (example of correspondence to effectuate a change to the SOW). In other words, Google and Cognizant continuously review and revise every aspect of the MCO employees' work in a collaborative manner. Rather than simply memorializing an arm's length business relationship, the SOW and its many amendments are indicative of a classic joint employer situation in which Google and Cognizant co-determine the minute details of the MCO employees' work as the project evolves over time.

Google and Cognizant co-determined that the service for the MCO project was to be completed at 7700 W Parmer Lane, Austin, TX, 78727. U. Ex. 44 at p. 7. That facility was referred to as a "GOVO" facility, meaning "Google-owned, Vendor-operated." Tr. at 70. While Google full-time employees ("Google FTEs"), individuals solely employed by Google, are able to access that building, only Google-contracted or "vendor" employees work in that office space. Tr. at 154, 359. Since the COVID-19 pandemic, however, MCO employees are permitted to work remotely and will continue to work remotely until at least February 2023, at which point the parties have

co-determined that a return to office for the MCO project is merited. *See* U. Ex. 14A (discussing Google and Cognizant’s role in deciding the MCO should return to office).

II. The MCO Project

The MCO employees for the project are typically divided among different teams, each responsible for a different aspect of YouTube Music, Tr. at 187, some of which include:

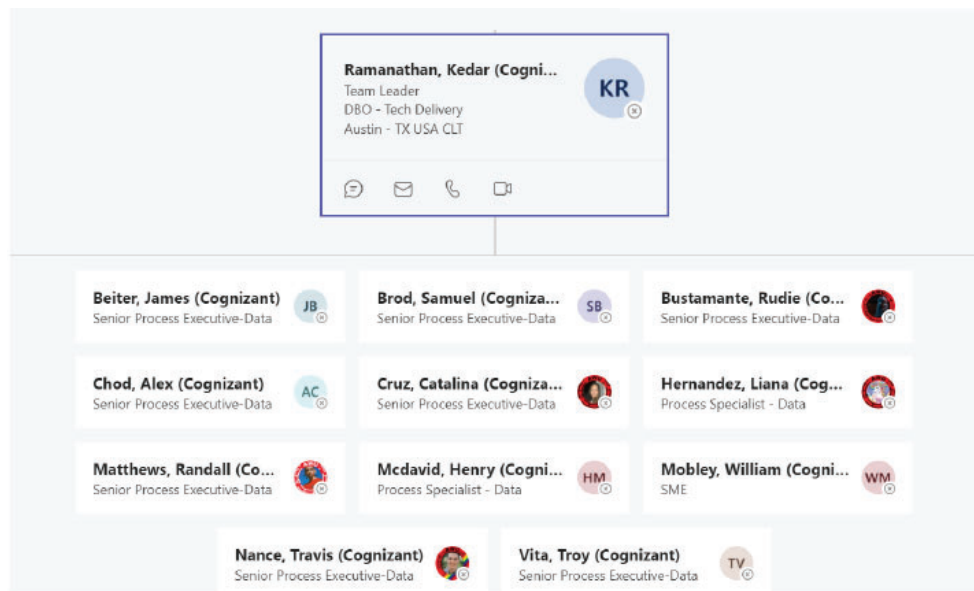
- “Official Artists Channel” or “OAC”
- “Coltrane Chart Evaluations”
- “Events”
- “BASS Quality Evaluation”
- “Content Coverage
- “Feedback”
- “Audio Library”
- “Corpus Coverage Monitoring & Outreach”
- “YTM Marketplace”

U. Ex. 44 at pp. 5–7, 35–36, 43.

The entire project is overseen by the “Operations Lead,” a position presently held by Priya Ramani.⁵ Each team is staffed with one or two Team Leads, and then mostly Generalists and

⁵ Ms. Ramani was Cognizant’s primary witness at the hearing. Her testimony was contradicted time and time again, not by the Union’s witnesses, but by Respondent’s own witnesses, documentary evidence, and even her own words. For example, Ms. Ramani testified that was unaware of Google’s security levels for Cognizant teams and “not sure of the exact nature of the security level [of Cognizant.” Tr. at 145. However, the Union presented evidence of Ms. Ramani’s extension prior conversations with MCO employees about Google’s color-coded security designation system. U. Ex. 14A at p. 1. Likewise, Ms. Ramani testified that terminated MCO employees are eligible for rehire, Tr. at 142, but Cognizant’s internal documents state that they are not eligible for rehire. *See* U. Ex. 38 at p. 6 (“Eligible for Rehire: *No*”); U. Ex. 39 at p. 2

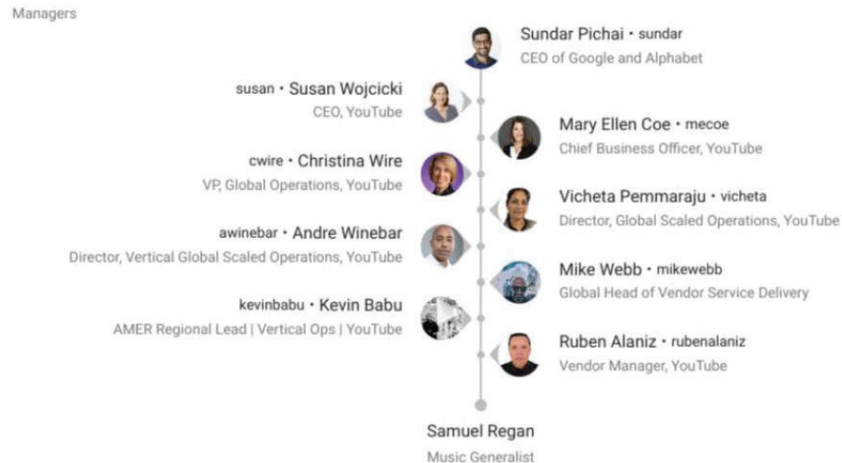
SMEs—the numbers of which are determined by the SOW. U. Ex. 44 at pp. 7–8. Team Leads are the supervisors of each team—they oversee discipline and performance, hiring decisions, conduct performance evaluations, and review and approve timecards. Tr. at 24-25, 90, 111. Both SMEs and Generalists directly report to the Team Leads. Cog. Ex. 10; Tr. at 186.



Example of a Team Organizational Charge. Cog. Ex. 10.

As shown below, Google’s internal databases identify MCO employees as “vendor” employees within Google’s extended workforce. See U. Ex. 35. Notably, Google’s internal organizational chart connects an MCO employee directly to Google managers, rather than to Cognizant supervisors or managers, which visually underscores and reflects how Google views MCO employees as fully integrated into Google’s operations that are subject to Google’s control.

(“Eligible for Rehire: No”). The Union, therefore, asks the Region to make an adverse credibility determination as to Ms. Ramani or, at the least, give her testimony the very little weight that it merits.



Example of Google’s internal organization chart, including MCO employee. U. Ex. 35.⁶

Generalists are hired directly to the MCO project, based on a job description, background check, and standards that were co-determined and mutually agreed to by Google and Cognizant.⁷ Tr. at 134. These standards are memorialized in the SOW. *See* U. Ex. 44 at pp. 10–15, 22–23 (delineating training, metrics, standards, hiring metrics for Generalists). Generalists’ employment on this project for Google is presumed to be continuous, and the MCO does not have a specific end date—indeed, the operation has continued for nearly three years and there is no indication that either Google or Cognizant intends to “end” the project. U. Ex. 44, pp. 24–48 (seven amendments to the SOW that change terms and conditions and also extend length of agreement).

⁶ This exhibit is a screenshot of Samuel Regan’s MOMA page. MOMA “hosts a profile page for each worker within Alphabet [Google].” Tr. at 487. Every employee in Google’s extended workforce has a MOMA page. Here, Samuel Regan is a bargaining unit member and MCO employee. His MOMA shows his managers, who are all Google FTEs.

⁷ At the hearing, there was testimony regarding a Cognizant policy of a “deployable bench,” i.e., an internal system whereby Cognizant employees whose projects have ended may search for other projects. Tr. at 62. Because successful candidates are by-and-large external candidates that are hired directly onto the team, the deployable bench is seldom used for the MCO and has little relevance to the facts of this case. Tr. at 139 (recalling one team member on the entire MCO who successfully received a role when it was posted internally).

Once hired, MCO employees begin their training. Because MCO employees are subject to both Cognizant and Google workplace policies, they undergo training on both sets of policies. Tr. at 58 (referencing “enhanced policies” for Google joint employees). The newly-hired MCO employees start with one week of Cognizant-specific training. Tr. at 260. In that training, the MCO employees will be introduced to their Cognizant e-mail, the “web clock”—the employees’ timekeeping tool—and information concerning Cognizant-specific policies and benefits. Tr. at 260. Following Cognizant’s training, the new hires turn to a Google-specific training—which begins with a general overview of Google and YouTube Music, instruction on how to use Google spreadsheets, and Google business etiquette. Tr. at 261. Then, MCO employees are trained on their work tasks specific to the MCO project, introducing them to the various Google tools used to process tasks and giving them an overview of each team. Tr. at 261. Importantly, this course of the training, per the SOW, utilizes Google’s created and mandated training materials, which contain specific instruction on how to process work tasks. U. Ex. 44 at pp. 8–9; Tr. at 383–84.

As introduced earlier, the main duty of the Generalist role is to fix various problems that arise on the YouTube Music platform. The different types of problems a Generalist may encounter are called “workflows.” Tr. at 184. For example, one workflow is to fix bugs⁸ in the YouTube Music platform that are both reported externally by individuals of the general public who visit YouTube or reported by Google FTEs. Tr. at 184. Tasks for each workflow are compiled either in a Google spreadsheet or the appropriate Google developed and maintained tool for that workflow. Tr. at 184; *see also* Tr. at 199 (“Buganizer” is the name of a Google tool used to process

⁸ A “bug” is a type of error within the YouTube Music platform. Tr. at 193. For example, if Beyonce’s picture is incorrect on her profile or a song title is incorrect, it may be reported (either by the general public or by Google FTEs) as an issue to be investigated and corrected, and eventually that issue gets funneled down to the specific team assigned to address that issue. Tr. at 193.

bugs). The Generalist is then expected to process the task in accordance with the instruction provided by the various trainings from their first weeks of employment and Google's provided documentation. Tr. at 184. In addition, Generalists may be assigned "ad hoc projects," *i.e.*, projects that extend beyond the SMEs' or Generalists' ordinary, day-to-day tasks and can include more complex, longer-term assignments. *See* Tr. at 370 (describing one ad hoc project as performing "quality evaluations of artists in Vietnam and Vietnam is not one of our usual regions."); Tr. at 490 (describing ad hoc projects as requiring "a certain glitch [be] fixed," "researching whether doing some task will benefit their system," or "testing out a new workflow that [Google] would like to implement").

Generalists are evaluated across several metrics, largely determined by Google and set in the SOW, *see* U. Ex. 44, including: attendance, productivity (including the "rate per hour" at which the work was completed for each workflow), the overall quality assessment score of the work, and compliance with various processes such as timely submission of timesheet, corrections, and the timeliness of an "end of day" form submission. U. Ex. 42. Per the terms of the SOW, at its discretion, Google may alter these expectations and add or remove standards or service levels. U. Ex. 44 at p. 15. At the outset of a new "service" to the MCO, Google sets initial performance that must be followed by Cognizant and achieved within three months. U. Ex. 44 at 11–15. Then, as the project evolves, those standards represent a baseline for Google's expectations that can be adjusted only with Google's blessing. Tr. at 618 (explaining that Cognizant can only make recommendations or proposals to Google concerning those expectations). An MCO employee's failure to meet these standards could result in discipline, including removal from the project. U. Ex. 42A–42D (example of discipline for failing to meet standards).

Following tenure and successful performance in the role, Generalists may then be promoted to the SME role. Tr. at 138. Although the SME role is technically considered a promotion from the Generalist position, the SME and Generalist positions work largely in tandem with one another. SME's are, in essence, senior Generalists; they utilize their knowledge acquired over time to assist Generalists in their tasks. SMEs are also responsible for evaluating the quality of the Generalists' work. Tr. at 183. They accomplish this by obtaining a sample of their work using Google-created tools, following a rubric with criteria set by Google, and providing a grade for the work which is automatically calculated by the Google tool. Tr. at 183. At times, SMEs may also do the same tasks as Generalists, particularly if a more advanced task comes through, or Generalists may step in and perform the tasks of SMEs such as during their absence. Tr. at 162–63, 240 (describing Generalists stepping in to cover for SMEs).

Track Title Issues						
Title Missing	Completely Incorrect (either through and override or the absence of one)	Music Video Like Title (uncleaned pure title)	Duplicate Artist name (ex. Feat. Daddy Yankee, Daddy Yankee)	Not Localized	Capitalization/Punctuation	Sub Label not added
Autofail	-10	-10	-5	-3	-3	-1
Not Autofail	10	10	5	3	3	1
Not Autofail	10	10	5	3	3	1
Not Autofail	10	10	5	3	3	1
Not Autofail	10	10	5	3	3	1
Not Autofail	10	10	5	3	3	1

Example of part of a rubric filled out by an SME. U. Ex. 4 at p. 2.

Like Generalists, SMEs may also be assigned ad hoc projects by Google FTEs. Tr. at 388. SMEs also take the first crack at dividing up the work among the Generalists for the week that comes through the various workflows, though Generalists can assign themselves work as needed. Tr. at

197-98. Critically, SMEs retain no discretion to supervise, discipline, and/or otherwise enforce any Cognizant or Google policy. Tr. at 415.

Google FTEs and MCO employees enjoy a collaborative working dynamic. For example, Google FTEs and MCO employees often collaborate on ad hoc projects. Tr. at 490. Google FTEs are also always available to help troubleshoot problems that arise in the course of MCO work and giving them further instruction on an as-needed basis. *See, e.g.*, U. Ex. 19, 20. Google FTEs further check the work of both SMEs and Generalists by, at times, sampling Generalists’ work and perform an independent quality assessment. *See* U. Ex. 28. As a result of that assessment, the Google FTEs often also make the MCO employees—especially SMEs—aware of systemic errors that may have slipped through the cracks but need to be resolved. *See* U. Ex. 26.

At the end of the workday, to accurately account for all tasks completed, all MCO employees must submit to Google and Cognizant an “end of day form,” created by Google, that logs the various tasks completed throughout the course of the day. Tr. at 470, 480; U. Ex. 44 at p. 10 (requiring that “Daily End-of-Shift snapshot report” be transmitted to Google “[w]ithin 2 hours after each shift”). On the back end, both Google and Cognizant have access to the data from these forms and use that data to jointly assess employee productivity.

Total		7	30	47		
Date	Workflow	Hours	Minutes	Volume	RPH	Link
11/18/2022	Classification-OMV/ATV Linking				-	Form Link
11/18/2022	Classification (Charts) - Artist Analytics					Form Link
11/18/2022	Classification (Charts) - Bass Coltrane Cluster Evals	0	30	10		Form Link
11/18/2022	Classification (Charts) - Bass Coltrane Link Evals					Form Link
11/18/2022	Classification (Charts) - Charts: Charts Warning Review					Form Link
11/18/2022	Classification (Charts) - Charts: Intelligent Review Queue					Form Link
11/18/2022	Classification (Charts) - Charts: Track Chart Metadata evals					Form Link
11/18/2022	Classification (Charts) - Charts: Video Chart Review					Form Link
11/18/2022	Classification (Charts) - Ad-Hoc Project	4	0	37		Form Link
11/18/2022	Classification (Charts) - QA Self Review					Form Link
11/18/2022	Non Productive - No tasks/jobs available	2	0			Form Link
11/18/2022	Non Productive - Out of Office					Form Link
11/18/2022	Non Productive - Tech Issues					Form Link
11/18/2022	Classification (Charts) - TDL Scrubs					Form Link
11/18/2022	Production Support - 1:1 with TLT/M					Form Link
11/18/2022	Classification (Charts) - QA Self Review					Form Link
11/18/2022	General Strike					Form Link
11/18/2022	Production Support - Process Training					Form Link
11/18/2022	Production Support - Providing Error Feedback(SME)					Form Link
11/18/2022	Production Support - Team Huddle	1	0			Form Link
11/18/2022	Production Support - Team Support(Query Resolution, BQ)					Form Link
11/18/2022	YT Analytics Metadata Fixes				-	Form Link

Example of “End of Day” Form submitted. U. Ex. 33.

ISSUES PRESENTED

- 1) Whether Cognizant and Google, LLC/Alphabet, Inc., are joint employers of the bargaining unit employees?
- 2) Whether the petitioned-for unit of Generalists and SMEs is an appropriate unit?
- 3) Whether to conduct the election by mail ballot, manual ballot, or mixed mail/manual ballot?

ARGUMENT

I. Google and Cognizant are “joint employers” of the bargaining unit employees.

A. Applicable Law

Recognizing employees may have more than one putative employer, the Board has long held that the two entities may be considered joint employers in order to effectuate meaningful collective bargaining under the Act. *See, e.g., Franklin Simon & Co.*, 94 NLRB 576, 579 (1951). Although the text of the Act does not explicitly define the term “joint employer,” the test for joint-employer status is circumscribed “by the common law of agency.” *Browning-Ferris Industries of Cal., Inc. v. NLRB*, 911 F.3d 1195, 1206 (D.C. Cir. 2018); *see also Boire v. Greyhound Corp.*, 376 U.S. 473, 481 (1964) (holding that a putative joint employer under the Act must “possess[] sufficient control over the work of the joint employees to qualify as a joint employer”).

The joint employer inquiry at common law turns on “the amount of actual and potential control that” the putative employer has over employees’ terms and conditions of employment. *Int’l Chem. Workers Union Local 483 v. NLRB*, 561 F.2d 253, 255 (D.C. Cir. 1977); *see also NLRB v. Browning-Ferris Industries of Pa., Inc.*, 691 F.2d 1117, 1124 (3d Cir. 1982). The common law of agency is clear that this analysis considers probative both the amount of control an entity is “authorized to exercise under [a] contract,” *i.e.*, reserved-but-unexercised control, as well as

indirect control to the extent that such control demonstrates that the putative employer “share[s] or co-determine[s] those matters governing essential terms and conditions of employment.” *Browning-Ferris*, 911 F.3d at 1201 (quoting *Dunkin’ Donuts Mid-Atlantic Distrib. Ctr., Inc. v. NLRB*, 363 F.3d 436, 440 (D.C. Cir. 2004)); *see also id.* at 1209–12 (cataloguing examples from the Restatement of Agency and state-court decisions applying the common law of agency and concluding that this proposition “finds extensive support in the common law of agency”). And, under the common law, control over *all* terms and conditions of employment is probative of employment status. *See* Restatement (Second) of Agency § 220(2).

The Board, in 2020, issued a final rule attempting to codify its then-interpretation of the common law agency doctrine as it pertains to the joint employer analysis (“2020 Rule”). 29 C.F.R. § 103.40. Under that rule, “[t]o establish that an entity shares or codetermines the essential terms and conditions of another employer’s employees, the entity must possess and exercise such substantial direct and immediate control over *one or more* essential terms or conditions of their employment as would warrant finding that the entity meaningfully affects matters relating to the employment relationship with those employees.” *Id.* Evidence of indirect control, contractually-reserved-but-never-exercised authority, or control over mandatory subjects of bargaining (as distinguished from the 2020 Rule’s defined essential terms and conditions of employment), however, is probative of joint employer status “only to the extent it supplements and reinforces evidence of the entity’s possession or exercise of direct and immediate control over a particular essential term and condition of employment.” *Id.* The rule enumerates as probative for the joint employment inquiry a putative employer’s control only over: wages, benefits, hours of work, hiring, discharge, discipline, supervision, and direction. *Id.*

Crucially, as the D.C. Circuit reminds, the NLRB’s purported rulemaking on the joint employer issue “must color within the common-law lines identified by the judiciary.”⁹ *See Browning-Ferris*, 911 F.3d at 1208. In promulgating the 2020 Rule, however, the Board likely colored outside those lines. For one thing, the Board’s conclusion that “contractually reserved” authority is insufficient for finding joint employer status has no basis in the common law. *See, e.g., Browning-Ferris*, 911 F.3d at 1212 (“The decisive test in determining whether the relation of master servant exists is whether the employer has *the right* to control and direct the servant in the performance of his work and in the manner in which the work is done.”). For another, the 2020 Rule’s relegation of “indirect control” to a second-tier level of relevance, or, in some cases, no relevance to the joint employer inquiry finds no support in the common law. As the D.C. Circuit noted, “a rigid distinction between direct and indirect control has no anchor in the common law.” 911 F.3d at 1216. So, “[a] categorical rule against even considering indirect control—no matter how extensively the would-be employer exercises determinative or heavily influential pressure and control over all of a worker’s working conditions—would allow manipulated form to flout reality.” *Id.* The state of the law on joint employer, as such, may be in flux.¹⁰ *See, e.g., Sanitary*

⁹ Because the joint employer inquiry is a “pure question[] of law about the traditional common-law agency principles,” should the 2020 Rule be reviewed by a U.S. Court of Appeals, it would be reviewed *de novo* and afforded no traditional deference under *Chevron*. *See Browning Ferris*, 911 F.3d at 1207–08.

¹⁰ Recognizing this point, the current Board has proposed a revised rule to rescind the 2020 Rule and propose a rule that more closely accords with the common law. *See* 87 Fed. Reg. 54645 (Sept. 7, 2022) (“[T]he Board believes, subject to comments, that the 2020 Rule’s approach to defining joint-employer status wrongly departs from common-law agency principles, which the National Labor Relations Act makes applicable in this context.”). Because the Board’s revised rule simply “codifies judicial precedent[,] . . . does not work a substantive change in the law,” and does not “upset settled expectations,” it is entirely appropriate to apply the revised rule to this case should it come into effect during the pendency of this petition. *See Nat’l Min. Ass’n v. Dep’t of Lab.*, 292 F.3d 849, 861 (D.C. Cir. 2002).

Truck Drivers & Helpers Loc. 350, Int'l Bhd. Of Teamsters v. NLRB, 45 F.4th 38, 47 (D.C. Cir. 2022) (remanding the question yet again to the Board).

Notwithstanding those concerns, the Union has presented robust evidence to establish that Google and Cognizant were joint employers of the MCO employees under *any* standard applied—including the narrowest standard established in the 2020 Rule. Even under the 2020 Rule, establishing joint employer standard does *not* require evidence that one putative employer or the other exercises *complete or exclusive authority* to determine the relevant essential terms or conditions of employment of the putative employees. Rather, the legal status of “joint” employer, by definition, encompasses a business relationship between two legally independent entities (whether co-equals or asymmetrical in power) that ***share or co-determine some or all of the working conditions*** for one or more employees. *See* 85 Fed. Reg. 11201–02 (Feb. 26, 2020) (“The basis of the [joint-employer] finding is simply that one employer while *contracting in good faith with an otherwise independent company*, has retained for itself sufficient control of the terms and conditions of employment of the employees who are employed by the other employer. Thus, the ‘joint employer’ concept recognizes that *the business entities involved are in fact separate* but that *they share or co-determine* those matters governing the essential terms and conditions of employment.” (emphasis added)) (quoting *Browning-Ferris*, 691 F.2d at 1124). And a petitioner need only show that the putative employer exercised the requisite control over *one* essential term or condition of employment. No more is required.

Accordingly, the requisite sharing/co-determination exists (1) where the putative employers collaborate by reaching consensus as to *at least one* relevant aspect of employment; and/or (2) where the putative employers collaborate by allocating responsibilities and functions between themselves, giving some control to both—for example, one employer determines the job

positions to be maintained at the place of business, defines the specific job duties, establishes the required training, and sets criteria and qualifications for hiring, retention or promotion, while the other screens and rates candidates, and handles on-site hiring, firing and supervision.

B. Petitioner has made a strong affirmative case that Google regularly exercises direct and immediate control, as well as indirect and reserved control, over employees' working conditions.

As catalogued at length below, the record demonstrates that Google and Cognizant “share or co-determine” *several* matters governing essential terms and conditions of employment, with Google “meaningfully affect[ing] matters relating to the employment relationship.” 29 C.F.R. § 103.40(a). Google’s role in sharing/co-determining employment conditions, moreover, is not confined to reserved, potential control rights on paper—although Google reserves significant rights to itself—but also involves direct and immediate control in actual practice on a daily basis. Indeed, Google prescribes “how to perform the work” (the manner and means) in minute detail; coordinates work tasks and work priorities; dictates the hours an employee may work; and sets specific benefits for MCO employees. And with respect to some aspects of employment, Cognizant has effectively ceded control to Google to make those determinations. The forms of direct control are further buttressed by the various other ways Google indirectly sets MCO employees’ terms and conditions, including by the hiring criteria for the jobs staffed on the MCO, setting the standards on which MCO employee may be disciplined, exercising indirect forms of discipline, and making recommendations to Cognizant on disciplinary matters. Thus, the Region should find that Google is a joint employer of the MCO employees.

1. Google directly controls the direction of work by assigning tasks directly to MCO employees, setting the priority of work for MCO employees, setting the speed at which work is completed, and controlling the general flow of work.

Day in and day out, Google assigns work tasks to employees through a number of electronic platforms owned, developed, and maintained by Google. In a traditional workplace, one company's employees might assign work to another company's employees in person or by emails. However, because of the remote nature of the MCO project, tasks are assigned by Google FTEs to MCO employees largely via electronic apps or tools. Google also directly assigns work to MCO employees in the traditional sense at times—by giving MCO employees direct assignments. Google, additionally, sets the priority or order of tasks, sets deadlines for that work, determines the rate at which employees perform tasks, can unilaterally reprioritize employees' individual work assignments, and even unilaterally reprioritizes employees' individual work assignments. Google's command of direct control over these aspects pertaining to the direction of work, alone, establish its status as a joint employer.

- i. Google's uses its own tools to facilitate its distribution of tasks directly to MCO employees.*

Beginning with Google's numerous tools for assigning work to employees, Google has developed numerous tools for each workflow to allocate tasks directly to the MCO employees on that team. For example, one workflow uses the tools "Snoop" and "Snoop 2," which populate YouTube bugs for employee review and keep track of every task assigned to the team for the week. Tr. at 197; 203. The tools operate as a "big open queue," so Generalists and SMEs alike are instructed to "pick what tasks they want to open." Tr. at 197.

Another workflow uses the Google developed-and-maintained tool known as the "Charts Review Spreadsheet" as a mechanism for Google to deliver work tasks to both SMEs and

Generalists. Tr. at 198. That tool uses a script, controlled by Google, known as the “IRQ script,” to populate work tasks for the team for the week. Tr. at 198, 407–08. Both SMEs and Generalists are expected to divide the tasks populated among themselves and process them by the end of the week. Tr. at 198.

Some tools allow Google FTEs to directly assign work to MCO employees in the traditional sense. For example, “Buganizer,” is a tool used to primarily fix bugs that arise in the YouTube platform, which thus generates bugs in a task queue for distribution among the MCO employees. Tr. at 199, 356. In that tool, bugs may be assigned directly to MCO employees through Buganizer. U. Ex. 36 (example of a Google FTE “creating an issue” for the MCO employees to resolve); Tr. at 491–92 (describing a particular bug placed in the Buganizer queue by a Google FTE and stating that “[m]ost of my bugs are created by [the Google FTE]”). Other times, bugs for Generalists or SMEs may also be delivered to the employees’ Google e-mail address directly from Google FTEs. Tr. at 201. SMEs are generally expected to follow-up to ascertain those bugs are completed by Generalists as well. Tr. at 201.

More specific to the SME role, SMEs are expected to, on a weekly basis, perform quality assurance (“QA”) work using the Google-owned tools known as “Q+” and the “MSO Charts QA,” which are employed depending on the workflow. At the beginning of each week, samples of the Generalists’ “work that was completed the prior week” are loaded from Google into Q+. Tr. at 364, 367–68. When the workflows are ready for the MCO employees to begin their work, a Google FTE will reach out directly to the MCO employees to alert them that they can begin working. U. Ex. 7 (e-mail alerting MCO employee that workflow “Charts are ready”); Tr. at 238–39. SMEs then commence their QA work on these samples. Tr. at 378. By the end of each work week, SMEs consult with a Google FTE to coordinate the configuration of the program “so that on

Monday morning when we come in and look at our Q+ extension, we can see work in each one of those queues, work that has been completed the week before.” Tr. at 377–78. QA performed via spreadsheets follows largely the same process. Google creates and maintains the script that automatically pulls samples for SMEs to review. Tr. at 407-08 (“A Google employee kind of configures all the different things that we want to see, which LDAPs^[11] to include, how big the sample is, what workflow we’re sampling, and it’s supposed to be like a set it and forget it. Like every Sunday at this time it’s going to pull 20 percent of the work in that workflow.”). Once the script runs, SMEs are then given tasks for the week to process and work through. Tr. at 408.

As underscored above, these tools are run and operated at the behest of Google to funnel work to the MCO employees. Critically, only Google has the ability to fix problems with the various scripts that underly these programs. *See, e.g.*, Tr. at 313 (describing contact with a Google FTE to then troubleshoot, diagnose, escalate an issue with generating work tasks in a QA spreadsheet), 377 (explaining that only Google FTEs can program Q+ to give their team work for the week). So the natural consequence of errors with Google’s tools—that only Google can resolve—is that work tasks for the individual MCO employee are not generated and that employee cannot complete his or her work, underscoring Google’s critical role in assigning work to the MCO employees. Tr. at 95–97 (describing consequences of problems with Google platforms), 130, 313 (describing the error in script as resulting in “no samples from Katie for Video Charts”), 314 (describing Google FTE’s obligation to “figure out what went wrong with the script to ensure that we received the correct samples”). Cognizant itself admits that it has no role in dictating tasks for its employees to complete—indeed, it is incumbent upon Google, not Cognizant, to ascertain that

¹¹ An “LDAP” is a term for a Google-provided personal identification and is usually a combination of an employee’s first and last name. Tr. at 198.

work is able to flow from its products to the employees. Tr. at 130 (explaining MCO tasks come directly from Google), 133 (responding to “[i]s there anyone in the Cognizant hierarchy that creates these tasks or workflows for the SPE’s and SME’s to do?”, Ms. Ramani, Cognizant’s witness, said, “No. The only time we might do it is when we are in user testing mode that we have to test and go back to Google with the response or in a training environment.”).

ii. Google FTEs assign ad hoc projects directly to MCO employees.

Google FTEs also assign longer term, complex projects known as “ad hoc projects” directly to employees. Ad hoc projects constitute a significant part of employees’ day-to-day work. *See* Tr. at 490 (“I’d say 50 percent of the time or maybe 40 percent of the time there’s an ad hoc project that’s available to be worked on in addition to the workflows, and so everyone on MCO has their main workflows and will do ad hocs.”). Google distributes these projects in a traditional sense, where the Google FTE dictates the assignment and instructions directly to the MCO employee chosen to complete the assignment. U. Ex. 17 (example of ad hoc assigned directly to MCO employee from a Google FTE); U. Ex. 18 (example of Google FTE alerting MCO employees that ad hoc projects were “ready” for them); Tr. at 244 (describing contact with a Google FTE where the FTE “pinged” the witness to say “Hey, I want to introduce a new ad hoc project to you.”); U. Ex. 18 (demonstrating Google FTE contact with employee to communicate that ad hoc project is ready for work); Tr. at 490 (describing ad hoc project as one “that the engineering team of the Googlers have assigned our team . . . and instructed us to complete it by a certain deadline”). As a Google FTE testified, in determining what goes into an ad hoc project, he noted “the scope of work, the volume of work, any supporting documentation, the actual procedure of how to perform the work, and a desired completion date.” Tr. at 556.

iii. *Google dictates the MCO employees' priority of tasks and sets the speed at which MCO employees work.*

Google's control over the direction of work does not stop with mere assignment of tasks. Indeed, Google also sets the priority for the MCO employees' work—*i.e.*, the order of tasks and the urgency of tasks to be completed.

Pursuant to the SOW, Google sets the “priority” of tasks for each workflow on a weekly basis. *See* U. Ex. 44 at pp. 5–7 (“Supplier will receive list of priority assets from Google Project Manager weekly”). In practice, that work and information is given directly to the MCO employee. Testimony concerning “Buganizer” illustrates this point. Buganizer, in addition to containing the tasks, has an internal priority categorization attached to each bug, set by Google, for the SME and Generalists' benefit. Tr. at 200. That priority level informs SMEs how they should assign the bugs—higher priority bugs are to be assigned to more experienced Generalists. Tr. at 200. And it signals to Generalists the urgency of the tasks and the requisite time demanded to devote to the task—known as the “SLA” or “Service Levels Agreement,” which are also memorialized in the SOW. Tr. at 200 (“[T]here is basically a time limit in which you have to complete these, based on the priority level of the artist affected by the bugs. So, if it is someone like Beyonce, that might have a SLA of two days, and you know, she is a very high priority artist, so that would have a short SLA. Some lower priority artists, you might have ten days or something.”), 334 (“The bugs themselves are created by Google full-time employees. They're assigned to the teams by Google employees and so the [time] limit is set within the bug” by Google), 493 (describing significance of SLAs); *see also* U. Ex. 44 at pp. 10–17 (detailing the various RPH, QA priorities and stated that “priorities” of work tasks for each workflow are

disseminated to the MCO by Google). This means that Google, again, instructs MCO employees on how tasks should be prioritized.

Also pursuant to the SOW, Google sets the amount of time in which an MCO employee is expected to respond to an inquiry from Google. U. Ex. 44 at p. 18. Google sets forth three categories, with varying degrees of importance, and allots an expected timeframe for responding. *Id.* For example, MCO employees are expected to respond to “workflow concerns or questions” “within 6 Business hours.” *Id.* And these expectations are enforced. Cognizant and Google routinely monitor people’s status online through the Google platform, the importance of which was described to one MCO employee as follows: “it was delivering on the client’s expectations that we be available at all times during work hours.” Tr. at 474.

The priority of tasks is also controlled, in part, by a metric known as the “rate per hour” or “RPH,” which requires that MCO employees complete *each* task within the requisite amount of time ultimately set by Google. Tr. at 567 (defining RPH as “It is the speed of work, meaning how many files are able to review or how many tasks that I am able to complete in an hour.”). Each workflow is assigned a different RPH value for its various tasks by Google. *See, e.g.*, Tr. at 474 (describing the RPH for various workflow as 17 RPH). These values are memorialized for new workflows in the SOW—Annexure 2, entitled “Service Levels,” provides that employees, based on varying degrees of tenure, are expected to meet a certain RPH—new agents on the Official Artist Channel Research team, for example, must attain an RPH of 6, but senior agents must reach an RPH in two tasks (research and verification) of 10. *See* U. Ex. 44 at pp. 5–6. Critically, Google retains the discretion to both “add new service level metrics that are agreed to and set out in accordance with Section 3 of the MSA” and may “at its discretion . . . delete any existing Service Levels,” meaning it can unilaterally alter the requisite rates under this protocol. U. Ex. 44. And

per Cognizant’s lead witness, Annexure 2 is followed and implemented by Cognizant. Tr. at 618 (describing “service levels” section of SOW as corresponding to, in part, the various service metrics mutually agreed upon by the parties).

And indeed, Google demonstrates its command over the RPHs and workers’ prioritization when it unilaterally alters individual MCO employees’ RPH targets. Google exercises its authority most commonly when it directly assigns “ad hoc projects” to MCO employees, to allow the employee to work on the task demanded by Google without the employee being penalized for failing to meet his or her RPH. For example, when assigning an ad hoc task to an employee, one Google FTE provided an entirely different RPH for the MCO employee’s assignments to allow her to work on the ad hoc project. *See* U. Ex. 17 (Google FTE instructing MCO employee that “[w]orkflow can be deprioritized in favor of this ad hoc”); Tr. at 372 (“[N]ormally every week we would focus on 1300 new release scrubs, 400 soundboard under merged tasks and hume feedback. And he’s basically saying we can do less than that expectation in favor of prioritizing this ad hoc project.”). Indeed, the Google FTEs are normally “aware of the volume of work that [the MCO] is producing every week, so . . . [Google FTEs] instruct us to favor the ad hoc over those regular expectations.” Tr. at 398. Given the frequency that employees are assigned ad hoc projects—as much as 50 percent of the time, *see* Tr. at 490—Google’s assignment of ad hoc projects and reallocation of employee-assignee’s work priorities, including the employees’ expected RPH, constitutes yet another example of Google’s significant and sustained direct control over employees’ assignment tasks and task prioritization. But as recent as February 1, 2022, Google

has added additional services with its blueprint for required knowledge expectations and requisite SLA, RPH, and QA levels. U. Ex. 44 at p. 46–47.

The RPH figure is hardly aspirational. Google comments on and rejects RPH suggestions from Cognizant, when, in Google’s view, the proposed RPH seemed too low in light of an over-performing team. Cog. Ex. 40 (e-mail from Google stating to Cognizant “Team is over-performing. MCO would like to understand why not 60 [RPH], based on team last 2-Quarter trends”); Tr. at 569 (agreeing that Google asked for justification on Cognizant’s proposed RPH). Cognizant cannot unilaterally set the RPH for a given workflow, and instead can only provide input or make proposals for Google’s ultimate sign-off. Tr. at 567–68 (explaining that Cognizant’s role in setting the RPH is to give “input” and “propose to Google” appropriate RPHs). Employees, moreover, are evaluated on their ability to meet or exceed the RPH value for each workflow such that their compensation, other benefits, and promotion eligibility are tied to them if they perform well, but may be disciplined for failing to maintain these set rates. *See* U. Ex. 42B (explaining that “James also missed quality in his Artist Scrub WF and RPH in New Release Scrubs”). For these reasons, RPH values set by Google are of paramount concern to MCO employees, and the MCO employees are acutely aware of the tasks they are completing to ascertain that they meet the requisite RPH standards.

In sum, Google’s assignment of tasks directly to the MCO employees and its regulation over the priority and speed of work are all hallmarks of direct control over the direction of work. Take, for example, *Browning-Ferris Industries of California, Inc.*, where the Board determined that BFI had direct control over fundamental working conditions, including “the speed of streams,”

assigned “specific tasks” to employees, and provided work priorities to employees.¹² 362 NLRB 1599, 1622 (2018); *see also Clayton B. Metcalf*, 223 NLRB 642, 644 (1976); *Int’l Trailer Co., Inc.*, 133 NLRB 1527, 1529 (1961). Google’s actions here are no different from those exercised by the putative joint employer in *Browning-Ferris*, exercising substantial control over the day-to-day tasks that employees are assigned (both through its tools and through Google FTEs), the prioritization of tasks, and even the speed at which tasks must be completed. Critically, on all of these points, Cognizant has fully relinquished control to Google to make the determinations. That these aspects are controlled by Google underscores its joint employer status.

2. Google directly prescribes “how to perform the work” (the manner and means) in minute detail.

Both SMEs and Generalists must perform their work using Google hardware, on Google software, following Google’s specific instructions, after being trained using Google’s training tools, and—until recently—at a Google-owned office building. The common denominator—Google—instrumentally dictates those terms both to Cognizant and directly to MCO employees, establishing yet another form of direct control over supervision, probative of joint-employer status.

i. *Google provides training, both initial and routine, to instruct employees on how to perform their jobs.*

At the beginning of employment on the MCO, each employee undergoes “Google training” pertaining to the workflow, which can last up to two weeks. Tr. at 354. The process for training is circumscribed by the SOW, which carefully delineates a detailed procedure and

¹² Whatever may be said for the viability of the legal framework set by *Browning-Ferris*, no challenges have been lodged against its application of law-to-fact—*i.e.*, determinations of what constituted direct or indirect control. As a result, the court declined to address a heavily-litigated legal issue on appeal because “the Board relied on evidence that Browning-Ferris both had a ‘right to control’ and had ‘exercised that control.’” *Browning-Ferris*, 911 F.3d at 1213. So, the Board’s analysis on what constitutes control is still intact and is instructive here. Petitioner relies on that analysis only to illuminate the concept of what constitutes direct control.

requirements to pass the initial training, what training ensues when “performance levels fall below agreed service levels or, based on other observations and feedback” and the materials to be used for training. U. Ex. 44 at pp. 8–9. Under the section titled “Google Resources,” according to a Cognizant witness, the SOW further establishes “who would be training [the MCO employees] and what kind of material would be getting to be trained.”¹³ Tr. at 616.

In light of those co-determined aspects of training and instruction, at the early stages of the MCO, this training was performed exclusively by a Google FTE using training slides created by Google to instruct MCO employees on how to perform their jobs. Tr. at 360–61; U. Ex. 23 (example of Google-specific provided training slides). Following that initial training, Google FTEs remained available to continue to answer questions that were not covered in the training. Tr. at 361. Since then, these trainings can be performed by SMEs using training slides, provided and written by Google, that convey precisely what Google wants each MCO employee on the workflow to know. Tr. at 96, 384, 413. Importantly, Cognizant retains no control over the training-materials required to be used by Google; any alteration to the Google training materials must be approved directly by a Google employee—as memorialized in the SOW. Tr. at 383–84, 413; U. Ex. 44 at pp. 8–9. Thus, the slide decks represent *Google’s*—not Cognizant’s—recitation of instruction to the MCO employees on how to do their jobs.

¹³ At the hearing, the Union objected to the redaction of this document in its entirety, arguing that this section was relevant to the joint employer inquiry. However, the Hearing Officer only sustained Petitioner’s request as to the “Services” and “Services Levels” sections of the Cognizant Exhibit 12 and Union Exhibit 43, which now encompass Union Exhibit 44. Subpoena Rec. Tr. at 8, 31–32; Regional Director’s Order Reopening Record for Limited Purpose of Receiving Documentary Evidence. Because, per Cognizant’s witness testimony, this information would be presumptively relevant to the joint-employer inquiry, the Union maintains that this document should be produced in an unredacted form as to this section.

Google FTEs still directly train employees, especially when SMEs are not available to do so. Tr. at 363 (describing new-hire training performed by Ribotto, a Google FTE, on a recent class of Generalists). Likewise, as new services are introduced to the MCO, Google FTEs will train the MCO employees on how to process tasks on those workflows. Tr. at 366; U. Ex. 44 at pp. 8–9.

Aside from training on work tasks, Google regularly deploys training modules on its own workplace policies—including Google security compliance and ethics—which employees are expected to complete. Tr. at 366, 424, 426 (testifying to the regularity of Google-deployed trainings); U. Ex. 30 (example of Google-required security training). From time to time, Google FTEs also conduct a “knowledge test” on employees “just to make sure that you remember and understand the process.” Tr. at 424, 466 (describing quiz as having “questions in sort of a general overview, kind of a macro view, of a few different workflows. It had questions about Corpus Quality, questions about classification, and it sort of reflected what you had retained from that initial training that was more zoomed out learning about the whole department”). These trainings, again, are another way that Google directly conveys its instruction over both workplace policy and tasks to and supervise the MCO employees.

ii. Google provides the means for completing all work.

In addition to training, Google prescribes the means for MCO employees to complete their work—*i.e.*, it provides its own Google tools for employees to complete their allotted tasks. First, until the pandemic, Google provided the office space for doing the work. As for hardware, Google initially provided MCO employees with “Chrome Books” (a Google-developed laptop), which are owned and distributed by Google to perform all MCO work.¹⁴ Tr. at 355. In addition, Google

¹⁴ Several Cognizant witnesses testified that Cognizant has since taken ownership of the laptops, but Respondents proffered no documentary evidence to substantiate that claim. The

distributes to all MCO employees a Google USB-enabled security key that unlocks access to Google’s internal systems and tools. Tr. at 356, 495. If MCO employees encounter problems with their hardware, they have been instructed to contact Google’s technical support hotline for troubleshooting. Tr. at 118, 430 (describing “Google Tech Stop”). MCO employees are also permitted to order Google hardware through Google’s internal store as needed. *See* U. Ex. 37 (example of an MCO employee’s recent Google-store order); Tr. at 405 (describing process for ordering equipment through Google store), 448, 496.

As for software—catalogued at greater length in the preceding section—Google provides MCO employees with its own proprietary software for them to not only *obtain* work tasks but also to *complete* them. *See, e.g.*, U. Ex. 9 (example of Google FTE trying to give access to team for access to a new Google-developed tool for their use of processing tasks). Buganizer, for example, is a Google-wide tool that is used as “a ticketing or routing system for bugs,” that allows the MCO employee “to fix the glitch.” Tr. at 484. Another Google tool, Q+, is used primarily by SMEs to process their QA review. Tr. at 364. The various rubrics and spreadsheets that SMES also may utilize to perform their reviews are also “always agreed upon mutually” by both Cognizant and Google before they can be utilized. Tr. at 132 (explaining that Google “creates” the spreadsheets), 137 (describing that Google creates the rubrics), 167 (stating that the quality assessment standards are set by Google), 246 (describing Union Exhibit 8 as a tool that is created and maintained by a Google FTE), 581. Employees are also given Google e-mails for correspondence within Google and have access to Google’s internal human resources data base (such as organization charts)—again, to enable MCO employees to be able to complete their tasks using Google software. In

record and Petitioner’s evidence, however, demonstrates that the laptops are still Google assets. *See* U. Ex. 31; Tr. at 429.

sum, in order for the MCO employees to be able to complete their job, Google—not Cognizant—supplies the requisite tools.

iii. Google provides written, detailed instruction to MCO employees on how to complete their work.

Turning to the manner in which work by MCO employees is completed, Google equips MCO employees with resources that provide painstakingly detailed instruction on how MCO employees must complete their day-to-day tasks. For example, all MCO employees on the Corpus Quality workflow are equipped with a Google-created manual called “MC3”—described by one employee as a “source of truth; as a standard that we should all be following.” U. Ex. 24; Tr. at 385. The MC3 document describes itself as “responsible for the definitions and guidelines for music data inside of YouTube.” U. Ex. 24. The various sections of the document, accordingly, each set standards and guidelines for data on YouTube Music, so employees routinely consult the MC3 to obtain the information they need to complete their principle works—*i.e.*, fixing various issues on the YouTube music platform. Tr. at 385. By way of an example, one employee testified about the manner in which they would utilize MC3 as follows: “If we have a question about localizing a Japanese artist’s name, we would go in here and, you know, there’s a chart specifically detailing if we’re in the US, this is what it should look like, if we’re in Japan, it should look like this, . . . very specific guidelines for handling different issues that we might see in YouTube Music, how to classify mixes versus remixes, different release types. It defines and sets standards and gives us guidelines.” Tr. at 384–85; *see also* Tr. at 386 (describing how the document can be navigated and noting that each tab contains various “examples, standards, guidelines, expectations” to which employees must adhere). Crucially, this source of instruction from Google implicates both SMEs and Generalists—the standard scores and various details in the rubric that SMEs principally use are thus largely set by the MC3, and the standards to which Generalists are

to follow in completing their work tasks are also set by the MC3. Tr. at 385. In the context of an ad hoc assignment, Google FTEs likewise provide direct guidance on completion of the projects. As a Google FTE testified, in creating the ad hoc assignment, he provides a “procedure of how to perform the work,” which is always relayed to the MCO employee to whom the project is assigned. Tr. at 556.

Particular to SMEs, SMEs evaluate the quality of Generalists’ work according to rubrics that must be approved by Google. The rubrics specifically contain a detailed list of criteria containing different errors which SMEs must assess in evaluating a Generalists’ work. *See* U. Ex. 4; U. Ex. 27. For example, one category for assessment includes a section concerning “Track Title Issues” and, “if the title is completely incorrect, [the SME] would take off ten points.” Tr. at 209; *see also* Tr. at 380. At the end, a score is automatically generated based on the points deducted in the rubric, known as the “QA score.” Tr. at 190. These scores, in turn, are used to determine discipline, including whether a performance improvement plan is necessary to correct any shortcomings. U. Ex. 42B. The various categories which SMEs must assess and the values allotted to each category are, however, set by Google, with only input but no decisive authority from Cognizant. U. Ex. 44 at pp. 10–14; Tr. at 618 (describing “service levels” section of SOW as corresponding to, in part, the various service metrics mutually agreed upon by the parties). At times, some input may be solicited from MCO employees or Cognizant management that may be later incorporated as the work progresses and evolves, but Cognizant cannot make those changes unilaterally—implementation is done by Google. Tr. at 380, 580; *see also* Cog. Ex. 39 (e-mail exchange concerning changes Google wishes to make to workflows); Cog. Ex. 33 (example of e-mail where Cognizant needs to consult with Google to change scoring in rubrics). Google

exercises this contractual authority continuously in a way that directly dictates MCO employees' pay (raises and bonuses), discipline, and other terms of employment.

iv. Google FTEs routinely instruct MCO employees on how to complete work.

In addition to the written instruction MCO employees receive from Google on how to complete their tasks, MCO employees routinely consult with Google FTEs to gain their insight on their day-to-day work. Preliminarily, workflow sample QA reviews performed by MCO employees are routinely reviewed by Google FTEs—known as the “calibration stage” or “off-cycle review” of a workflow. Tr. at 394, 549–50. At that stage, “a random sampling of the QA’ed results from the previous stage, are sampled and provided for review generally by FTE’s here at YouTube, so full-time employees here at YouTube. And basically . . . we’re utilizing the calibrations stage to ensure that . . . the program and the workflow and the guidance that we’ve laid out is being . . . applied . . . as we’ve defined it.” Tr. at 550. After the Google FTE performs the calibration review, the MCO employee who performed the work reviewed is notified of their “score.” U. Ex. 28; Tr. at 553.

Several MCO employees testified as to their routine contact with Google FTEs to discuss work tasks. For example, one SME has a “weekly sync” with her corresponding Google FTE—“once a week on Thursdays, typically we meet for 30 to 45 minutes.” Tr. at 231; *see* U. Ex. 21 (example of agenda for “weekly sync” with a Google FTE). Both the SME and the Google FTE have input on the agenda for the meeting, but the Google FTE usually takes the opportunity to “discuss any trends that she sees with our work,” “introduce a new ad hoc project,” and “discuss things like overhead capacity for the team.” Tr. at 231–32. Those conversations also take the place in the Google Chats tool—where the MCO employee routinely discusses new ad hoc projects or updated guidelines. Tr. at 244, 387 (describing contact with Google FTE as “a few times a day,

usually”). In addition, if a Generalist working on a task asks the SME for help, or the MCO employee has questions about an ad hoc project, the MCO employee “could reach out to [a] full-time employee directly for their opinion.” Tr. at 232, 244; *see also* U. Ex. 19 (showing dialogue between SME and Google FTE over questions concerning specific protocol that should be followed in a certain circumstance); U. Ex. 20 (same). Or, an employee that has an issue accessing a tool generally consults a Google FTE for assistance to troubleshoot. Union Ex. 6; Tr. at 234–35. Finally, if a bug appears to be too complex for the MCO employee to handle, it gets escalated to a Google FTE. Tr. at 232. Thus, the MCO employees directly rely on instruction and guidance from Google FTEs to assist them in the completion of their work.

Google FTEs also routinely initiate contact with MCO employees regarding MCO work tasks. For example, in Union Exhibit 20, a Google FTE reached out to two SMEs to determine whether they were “fully up and running on a new queue in Soundboard which is a Google tool that we use.” *See also* Tr. at 390. Or, if a Google FTE employee conducts their own QA, they will notify the Generalists and SMEs that they have feedback in Q+ to review. Tr. at 393; *see also* U. Ex. 25 (example of Google FTE performing QA on Generalist work). And Google FTEs will often collaborate with MCO employees to flag errors in the system that may have fallen through the cracks—*i.e.*, to catch any systemic errors that were not in the SMEs original samples. U. Ex. 26 (following his own QA, the Google FTE found his own errors that were relayed to MCO team and instructs the MCO employee to “make sure corrections are made” for the errors he identified); Tr. at 394–95. Lastly, Google FTEs request justification from SMEs the work the SMEs complete. *See, e.g.*, U. Ex. 29 (Google FTE requesting that an SME “help and provide details/context on the reasoning for the ‘wrong artist’ status from the agent level” on several artists). In sum, Google FTEs directly contact MCO employees to give instruction, feedback, or ask for justification on

their work—all signs of supervision and control over the manner and means of the MCO employees’ work.

v. *Google formally monitors each MCO employee’s work.*

In addition to informal monitoring through the extensive contact Google FTEs have with the MCO employees, Google formally monitors the tasks completed by the MCO on a daily basis. Cognizant and Google require that the employees submit at the end of each workday an “End of Day” form that catalogues each task completed and how much time was spent on each task. *See, e.g., U. Ex. 33.* Both Google and Cognizant have access from the backend of these form, and the form itself states that it was created by Google. *Tr. at 480.* In any case, Cognizant is required by the terms of the SOW to transmit the form for each employee “[w]ithin 2 hours after each shift.” *U. Ex. 44 at p. 10.* This allows Google to have direct insight as to the [b]eginning and end-of-day queue levels,” “ticket levels”—in other words, what work is outstanding and still needs to be completed; as well as “agency productivity data.” *Id.* Google also retains the ability to make “ad-hoc requests to present additional data, for the purpose of clearing indicating [Cognizant’s] current status, gaps with the targets, action plan to improve/sustain continuous improvement.” *Id. at 9.* Undeniably, Google’s monitoring of the daily status on an employee-by-employee level—rather than as the MCO on the whole—highlights yet another way that Google controls and monitors the manner and means of the work, or in other words, supervises the MCO employees.

vi. *Google directly controls where work is to be performed.*

Finally, Google keeps a tight grip on where the MCO employees perform their work, underscoring yet another form of direct control that Google exercises. As dictated by the SOW, MCO employees were originally supposed to complete their work in a “Google-Owned, Vendor-Operated” building located at 7700 West Parmer Lane. *U. Ex. 44 at p. 7; Tr. at 152.* Following

the COVID-19 pandemic, MCO employees were then permitted to work remotely, which they remain doing presently. Ms. Ramani, a Cognizant witness, admitted that the ability for employees to work remotely hinges on Google’s approval. *See* U. Ex. 14A; *see also* Tr. at 148 (stating that “[W]e received the request from Google to return to the office.”). When responding to various MCO employees’ concerns regarding “return to office” announcements, Ms. Ramani explained that no decision could be made until Google finalized its internal risk analysis of its various projects—higher risk projects are more likely to be required to be performed from an office. U. Ex. 14A at p.1. Even the projects deemed low risk—or “green”—have not been approved for remote work by Google, thus the Google “risk team put all decisions on hold.” *Id.* So it is ultimately up to Google to let Cognizant know when “to return to [the] office space.” *Id.* at 2 (“I’m meeting Ruben and Rob [two Google FTEs] again today. Let’s see if they have any update.”), 3 (explaining that when Google’s extensions are over Ms. Ramani would “lose [her] remote access”); *see also id.* at 7 (“I don’t think there will be another 90 day [extension] because Google has already issued a return to office. We [Cognizant] pushed back. We asked them to reconsider our team’s request, we asked them to reconsider us, staff and things.”).

At bottom, Google heavily regulates the manner and means of the MCO’s work. Google is involved in virtually every aspect of the employees’ day-to-day completion of work tasks: Google provides the tools needed for employees to complete their work, routinely instructs employees on how to complete their work, provides guidance at every turn should the MCO employees require it, and even dictates where employees may complete their work. By contrast, Cognizant’s role in these matters is practically nowhere to be seen, further underscoring the direct control Google exercises over MCO employees’ day-to-day completion of work.

In similar circumstances, the Board has found that control over both the manner and means of an employee's work easily establishes joint-employer status. Focusing first on the means, that Google provides the entire means for completing the work here—from the office space down to the very programs used to process all work tasks—all accord with long-standing Board precedent, concluding that providing employees with all the tools needed to complete the job is probative of that employer's control over the means of work. As the Board found in *CNN America, Inc.*, 361 NLRB 439, 445 (2014), the facts that CNN provided employees with an office space, a CNN e-mail address, and virtually all the equipment to perform their jobs were all illustrative of CNN's control over the means—a sign of joint employer status. *See also Harvey Aluminum, Inc.*, 147 NLRB 1287, 1289 (1964) (finding joint employer where putative employer owned buildings, tools, and materials used by subcontractor); *Aldworth Co.*, 338 NLRB 137, 164 (2002) (same). As for the manner, the Board has found that an employer exerts direct control over supervision and instruction when it communicates detailed work directions to employees, holds meetings with employees to discuss work tasks and objectives, and disseminates preferred work practices. *See Browning-Ferris Inds. of Ca., Inc.*, 362 NLRB at 1617; *see also Sun-Maid Growers of Ca.*, 239 NLRB 346, 351 (1978) (finding putative employer status where putative employer assigned work directly to employees and made a determination as to which tasks took precedent). Virtually all of these indicia are present here: Google tells the MCO employees how to do their work through written instruction, Google FTEs are available to answer any questions and direct MCO employees when they have questions, Google FTEs and MCO employees have weekly meetings, and Google provides training on its practices. These facts establishing direct control over supervision—telling the employees *how* to perform their job—unambiguously point to Google's joint employer status.

3. Google directly controls the MCO employees' work hours, ability to work overtime, and other aspects of employees work schedules.

Google exerts direct control over the MCO employees' work hours in three ways, buttressing its role as a joint employer over the MCO employees. First, Cognizant explicitly cedes to Google control over MCO employees' the holiday schedules, *i.e.*, days off for the entire company. *See* Cog. Ex. 1 at pp. 23–24 (explaining that Cognizant employees “will follow” the client’s holiday schedule). In general, both organizations prescribe their own list of work holidays. Tr. at 150. However, there are some holidays that Google recognizes, but Cognizant does not (in which case the Google offices are technically closed, but Cognizant offices are technically opened), and vice versa (in which case Google offices are technically opened, but Cognizant offices are technically closed). Tr. at 248. In any case, the MCO employees are instructed to “follow the Google holiday calendar,” but in practice MCO employees are only allowed to take holidays that are recognized by *both* organizations. Tr. at 151, 248 (describing recent holiday that was only recognized by Cognizant and employees “were told that [they] are expected to work, even though it is a holiday, because it is not a Google holiday”); *see also* U. Ex. 10 (list of Google holidays). So for example, if a holiday is a Cognizant-recognized holiday, but not a Google-recognized holiday, the MCO employee would not be entitled to take the holiday and would be required to work. Tr. at 151; *see* U. Ex. 11 (producing error message for attempting to clock in on a Cognizant-recognized, but not Google-recognized holiday).

Second, Google and Cognizant co-determine the MCO employees' hours of operation. As memorialized in the Google and Cognizant’s SOW, the hours of operation are set as 8 am to 5 pm—and several witnesses testified that those were the hours of operation set by both parties. U. Ex. 44. This is not merely setting general hours of operation, rather, MCO employees are “expected . . . [to be] available to Google employees via ping or e-mail from 8:00 to 5:00” and,

prior to the pandemic, “it was even stressed that, you know, we were there on time, in our desks at 8:00 a.m., you know, visible to Google employees that we were available.” Tr. at 358, 471 (explaining that expectation was that employees were at their desk and responsive to deliver on “client expectations”). That understanding is only reinforced by the “response times,” for which Cognizant employees are expected to respond to Google employee inquiries. *See, e.g.*, U. Ex. 44 at p. 18 (requiring that Cognizant employees respond to “workflow concerns/questions” within “6 business hours” of the Google-posed query). One MCO employee explained, “when you’re on Google and you’re active you get a little green dot next to your name that says you’re active.” Tr. at 471. On one occasion when that MCO employee forgot to log into his Google-provided e-mail (thus triggering the “green dot”), his Team Leader reached out to notify him that he needs to maintain his green status because “it was delivering on the client’s expectations that we be available at all times during work hours.” Tr. at 474.¹⁵ As such, Google effectively dictates the MCO employees’ work hours for the day and week.

Finally, Google and Cognizant co-determine the MCO employees’ ability to work overtime. The SOW outlines their hierarchy of authority on this point: “Any overtime work required must be approved by Google in writing before [Cognizant] resources perform any billable overtime work.” U. Ex. 44 at p. 3. So, Google must ordain any MCO employee’s request for overtime work before they can complete that work. This tracks with witnesses’ testimony, where, in practice, no MCO employee is permitted to unilaterally work overtime without approval from Google, whether direct approval from a Google FTE or through the chain of command between Cognizant and Google. *See* Tr. at 266 (explaining that Google FTEs may ask MCO employees to

¹⁵ By contrast, MCO employees face no adverse consequence if they are late punching in or forget to punch in through Cognizant’s timekeeping system, called the “web clock.” Tr. at 471–72.

work overtime to complete tasks), 458, 543 (confirming that Google must provide its approval for overtime to be worked on the MCO project).

4. Google co-determines the levels of benefits to which MCO employees are entitled.

Google also exerts direct control over the MCO employees by co-determining what benefits the MCO employees must receive. Several witnesses testified that MCO employees are entitled to “enhanced benefits” that are only available to those employees on a Google-operated project like the MCO. Tr. at 40–41; Cog. Ex. 4 (summary of benefits available to MCO employees only). That is because “Google . . . has a request for their vendors that we provide a minimum threshold and so where [Cognizant does] not meet that minimum threshold, [Cognizant’s] benefits are then amended to make sure that [it] meets that threshold” Tr. at 66. Accordingly, MCO employees are entitled to additional benefits to which other Cognizant employees are not entitled, such as additional paid parental leave and educational assistance. Tr. at 65. To the extent that Google promulgates additional benefits requirements, as the Cognizant witness explained, Cognizant then obliges in amending its benefits packages to comport with those new requirements, emphasizing the direct control Google has over the types of benefits offered to the MCO employees. Tr. at 66.

Critically, these benefits are also only available to associates “while they’re working on Google projects.” Tr. at 67. So, if the YouTube project were to “end,” the MCO employees would lose the enhanced benefits. Tr. at 64. Google’s requirements thus allow the MCO employees to be entitled to more robust benefits. But if Google were unceremoniously removed from the

relationship, the MCO employees would immediately lose the benefits—further underscoring Google’s role in determining the benefits to which MCO employees are entitled.

5. Google sets the hiring criteria for the MCO operation, including the number of MCO employees for the operation, exercising indirect control over employee hiring.

While Google does not directly interview or hire MCO employees, it still plays a substantial role in setting Cognizant’s hiring practices for new employees on the team—also probative of its joint employer status. First and foremost, Google must agree to the job descriptions for the positions of new employees on the MCO. Tr. at 137 (explaining that Generalists are hired “based on the job description that was mutually agreed between us and Google, some of the key skills, prior experience, and their education”). The SOW between Google and Cognizant sets the “minimum criteria” for the MCO employees and delineates the roles and responsibilities for those roles. U. Ex. 44 at pp. 22–23. Accordingly, Cognizant cannot unilaterally hire based on its own criteria; it must do so according to the mutually-agreed criteria memorialized in the SOW. *Id.*

Next, Google co-determines the staffing levels for the MCO—*i.e.*, the number of positions necessary for the team. As provided by the SOW, Cognizant is required by Google to maintain MCO staff levels according to ratios set in the SOW. U. Ex. 44 at p. 7; *see also* U. Ex. 44 at p. 16 (Amendment 7 to SOW). For example, Google requires that SMEs be hired in accordance with the follow ratio to Generalists (from U. Ex. 44 at p. 16):

“6.1 Support Ratio for YouTube Social Media Support

Role	Support Ratio
Quality Analyst – Tier 3	1:10 of Agent rate
Subject Matter Expert – Tier 3	1:15 of Agent rate
Team Lead – Tier 3	1:15 of Agent rate
Operations Manager – Tier 3	1:50 of Agent rate
Trainer – Tier 3	1:50 of Agent rate

All of the above roles are billable as per the rates given in Section 6 of this SOW. The above roles will be staffed based on the actual requirements as mutually agreed between the parties.”

As emphasized in both the original SOW and Amendment 7, the roles “will be staffed based on the actual requirements as mutually agreed” and Cognizant can only change the staffing levels after engaging “in discussions with Google in accordance with change control process.” *Id.* At bottom, Google co-determines the requisite staffing levels along with Cognizant and memorializes those agreements in the SOWs.

Finally, Google sets the parameters of a pre-employment background check for Cognizant to conduct. U. Ex. 44 at p. 4 (“[Cognizant] will carry out, at its expense, pre-employment background checks for the Personnel involved in the provision of the Services *as per the background check policies in Annexure 4 (Background Checks)*” (emphasis added)). Consequently, an employee that fails to satisfy the background criteria determined by Google is ineligible to work on the MCO team—an action required under the terms and conditions set by Google.¹⁶ Accordingly, Google’s control over that aspect of hiring, too, has direct implications for employees that underscore its joint employer status.

6. Google co-determines the standards to which employees are held and may be disciplined and is indirectly involved in disciplining MCO employees.

Cognizant is responsible for disciplining and terminating MCO employees; however, Google has a meaningful role in making such decisions because Google sets the standards and policies by which employees are judged and that oftentimes force Cognizant’s decision to terminate the employee.

¹⁶ As noted in footnote 13, *supra*, Petitioner requested pursuant to its subpoena that the Hearing Officer order Google and Cognizant to produce unredacted versions of Cognizant Exhibit 12 and Union Exhibit 43—the SOW and Amendments. Because this information would directly illuminate another form of Google’s control relevant to the joint employer inquiry, Petitioner maintains its original position that this document should be produced in an unredacted form, especially as to this section.

First, the criteria by which MCO employee performance is evaluated are set by Google. In Annexure 2 to the SOW, entitled “Service Levels”, Google and Cognizant memorialize in minute detail baseline metrics of quality assurance, RPH standards, and knowledge expectation benchmarks for each category of employee based on tenure and role. U. Ex. 44 at pp. 10–11. It also sets timeframes in which those expectations must be achieved, particularly when a workflow begins, but also for once the project is off the ground and running. *Id.* (noting that beyond 30 days, Generalists and SMEs are to achieve a certain level of individual QA and RPH). Google reserves for itself, however, full authority to amend those expectations at its discretion. *Id.* at 15 (stating that Cognizant “shall measure performance of the service levels as set out in [the] Annexure”). So, Cognizant has effectively ceded control on this issue to Google and simply follows the metrics that Google may—in its discretion—alter. To that point, unsurprisingly, when assessing an individual employee’s performance, Cognizant considers the Google standards set initially in the SOW and does not deviate from them: “RPH . . . across all [workflows],” the employees’ QA score, and compliance with Q+ corrections. U. Ex. 42B. To illustrate, in the Corpus Coverage workflow, Cognizant utilizes many similar RPH and QA targets to the ones initially set in the Annexure 2 to the SOW. *Compare* U. Ex. 44 at 35–36 (setting the RPH and QA target for the Corpus Coverage workflow); *with* U. Ex. 42B (setting corresponding RPH and QA targets); *see also id.* at 9 (explaining that MCO will be evaluated based on “Google standards communicated to Supplier.”).

Failure to comply with these criteria can result in discipline or being placed on a “performance improvement plan,” which can lead to further discipline. U. Ex. 42A, U. Ex. 42C, U. Ex. 42D. One MCO employee, for example, was placed on such a plan for failing to maintain the RPH benchmarks and for failing to meet the requisite QA score. U. Ex. 42A, U. Ex. 42C, U.

Ex. 42D. If his non-compliance with the plan were to continue, because he is on a Google project, an entirely different disciplinary process applies with additional layers of review. *See* U. Ex. 42A (“Please note that this is a Google case, if the recommendation is adverse action please let us know so that we can take it forward for additional review.”). And, in any case of poor performance, an MCO employee’s failure to satisfy the performance benchmarks must be reported to Google. U. Ex. 44 (requiring “fortnightly, quarterly” report that includes “[a]ll the operational KPIs and Quality KPIs, analysis and narrative for underachieved targets along with action plan for improvement . . .”).

Second, MCO employees remain beholden to and can be disciplined for violations of *Google’s* company policies—including by Google itself. Indeed, MCO employees are subject to any additional policies that Google imposes—known as “enhanced” policies—and Google may enforce those policies with MCO employees. Tr. at 59. As a result of these violations, employees who are terminated from the MCO project as a result of violations of Google security policies are not eligible for rehire. *See* U. Ex. 38 at p. 6 (“Eligible for Rehire: *No*”); U. Ex. 39 at p. 2 (“Eligible for Rehire: *No*”). To illustrate Google’s influence here, consider two instances in which Google was involved in disciplinary proceedings. One instance implicated Google’s requirement concerning the use of its software and hardware—which “supersede Cognizant’s” and thus MCO employees are expected to comply with Google’s acceptable use policy. U. Ex. 39 at p. 2; *see also* U. Ex. 38 at p. 5 (advising an employee “I hope you understand that behavior is not tolerated and Google/Cognizant has really high standards”). In that instance, an MCO employee was involuntarily terminated over his misuse of Google assets, as per Google standards, with Cognizant justifying the decision to terminate him on the fact that his actions “were in direct violation of client [Google] policy.” U. Ex. 39 at p. 2.

Another occasion involved Google’s policy requiring employees to use a secured network to complete their MCO work. U. Ex. 38 at p. 4. An MCO employee used a “hotspot” as a source of internet access on his Google-provided equipment. *See id.* Google immediately “suspended” his access to Google servers when they discovered the violation. *Id.* As a direct result of that suspension, which prevented him from completing any of his work, Cognizant also suspended the employee. *Id.* at pp. 2–3 (“Since Alexander is not able to do any client work given the security violation, you can certainly place him on a very brief investigation loa.”). Cognizant ultimately decided to terminate that employee, citing his conduct as a “client security violation.” *Id.* at p. 4.

Google may also request that certain employees be removed from the MCO project or even discharged from employment. Tr. at 46 (“[T]hey can request, but it is up to us to make the final decision . . . for their Cognizant employment.”); *see also* U. Ex. 39 at p. 3 (referencing another case where Google “did ask that the associate be removed”). A request from Google to be removed from a project is taken seriously by Cognizant—it will lead to a further investigation to inform whether that person should also be terminated from Cognizant. Tr. at 46–47. Cognizant indeed considers any “reputational damage as it pertains to the client [Google].” *Id.*; *see also id.* at p. 3 (“Google can question our integrity on allowing him to process despite his actions.”).

Given the foregoing, Google influences and even exercises its ability to discipline employees—including by requesting employees be removed from the project, by enforcing and imposing its own company policies, and even suspending access that allows employees to continue to do their jobs. And if Google requests that the MCO employee be removed from the project—a decision with which Cognizant would, without question, oblige—the individual would no longer be eligible for Google enhanced benefits and not eligible for rehire, thus underscoring a direct detriment at Google’s sole hand. Tr. at 67.

* * *

In sum, no matter the standard, Google exerts a significant amount of direct and indirect control over MCO employees' hours of work, supervision over the manner and means of the work, benefits, hiring, and discipline. This handily rises to the level of joint employment status

That a cost-plus contract may be implicated here has no impact on that sound conclusion. To be sure, the SOW sets a "maximum total cost" for the MCO. U. Ex. 44 at p. 2. And a "cost plus" agreement generally operates such that one entity may "reimburse" the other based on a wage schedule, as the employers in *Goodyear Tire & Rubber Co.* did. 312 NLRB 674, 678 (1993). But the SOW and the relationship here goes far beyond the scope of the arm's length cost-plus contracts that the Board has traditionally found to be insufficient to determine a putative employer's status as a joint employer. See *Goodyear Tire & Rubber Co.*, 312 NLRB at 678; *Hychem Contractors, Inc.*, 169 NLRB 274, 276 (1968). Indeed, those cases were chiefly concerned with the user employer's right to police its expenses, so the Board reasoned that a contract that sets forth a reimbursement procedure is not "what the Board or the courts had in mind when using the phrase 'share or codetermine' essential terms such as wages." *Goodyear Tire & Rubber Co.*, 312 NLRB at 678. The contract at issue here, by contrast, regulates much more: training, tasks, method of tasks, hiring metrics, staffing levels, performance metrics, line-speed rates, hours of operation, overtime procedures, among many terms and conditions of employment. For this same reason, the Board in *CNN America, Inc.*, 361 NLRB 439, 446 (2014), drew the same conclusion as to the relevance of cost-plus agreements. While, of course, practical considerations regarding maintaining some cost-preserving methods are well-taken, there is a fine line between cost-saving measures and control over practically every important aspect of the employment relationship of the MCO employees. To conclude otherwise would permit the use of cost-plus

agreements to mask employment relationships and skirt meaningful bargaining relationships under the Act. And even under the 2020 Rule, the existence of a cost-plus contract goes only to assessing direct and immediate control over wages. 29 C.F.R. § 103.40(c)(1). The 2020 Rule does not confer the mere existence of a cost-plus agreements as a blanket defense to all aspects probative of joint employment.

Notwithstanding the legal standard, a common-sense review of the extensive record shows the folly in Cognizant and Google’s position that Google is not a joint employer. How could meaningful collective bargaining be effectuated when the decisionmaker and entity that must sign-off on many critical bargaining issues—Google—is absent from the bargaining table? When the MCO employees gather around the table to bargain over, for example, hours of work, work tasks, holidays, return to work, overtime, the requisite speed at which they work—all mandatory subjects of bargaining—their efforts to do so will be futile with only Cognizant at the table. Indeed, Cognizant has practically ceded its authority on these issues to Google, or, at minimum, needs Google’s sign-off. Cognizant, as a result, would have no meaningful ability to enter into an agreement with employees over those issues. Therefore, common sense, too, dictates that Google must be present at the table to have a meaningful bargaining relationship. After all, “we should hesitate to find the common law at war with common sense.” *Browning-Ferris*, 911 F.3d at 1219; *see also Hein v. Freedom From Religion Found., Inc.*, 551 U.S. 587, 633 (2007) (“[T]he soul of the law . . . is logic and reason.”) (Scalia, J., concurring in the judgment). The extensive direct, indirect, and reserved control Google exerts or retains over the MCO employees underscore that the only way to effectuate meaningful collective bargaining here is for Google to have a seat at the table as a joint employer.

II. Appropriateness of Petitioned-For Bargaining Unit

Because the petitioned-for unit is presumptively appropriate, *Haag Drug Co.*, 169 NLRB 877, 877 (1968), the employers bear the burden to proffer evidence to rebut that presumption, *Laurel Associates, Inc.*, 325 NLRB 603, 603 (1998).

A. SMEs are not supervisory employees, excluded under the Act.

As a preliminary matter, the employers did not assert—in their filings nor during the proceedings—that the SMEs should be excluded under the Act as supervisors. *See Cognizant and Google Statements of Position*, Bd. Exs. 1(e), 1(f). Accordingly, the employers have effectively waived, and should be precluded from raising, that argument, given that the petitioned-for unit is presumptively appropriate. *See Laurel Associates, Inc.*, 325 NLRB at 603; NLRB Case Handling Manual at 11218. In any case, even addressing that belated and unasserted contention, the argument that SMEs constitute supervisors as defined under Section 2(11) of the Act is entirely without merit.

1. Legal Standard

The Act excludes from its definition of covered “employee” all “supervisors,” defined as “any individual having the authority, in the interest of the employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.” 29 U.S.C. § 152(11). Accordingly, to fall within the scope of this provision, the employee must: (1) possess any one of the twelve indicia listed in Section 2(11) or can recommend the same; (2) the exercise of such authority requires the use of

independent judgment; and (3) the individual holds the authority in the interest of the employer. *NLRB v. Health Care & Retirement Corp.*, 511 U.S. 571, 573–74 (1994).

The burden of proof to exclude an individual from voting rests on the party seeking the exclusion. *See Sweetener Supply Corp.*, 349 NLRB 1122 (2007) (citing *Golden Fan Inn*, 281 NLRB 226, 230 fn. 24 (1986)). With respect to supervisory status, the party asserting that such status exists bears the burden of proving supervisory status by a preponderance of the evidence. *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706, 711–12 (2001). Mere inferences or conclusory statements are insufficient to establish supervisory status. *Sears, Roebuck & Co.*, 304 NLRB 193 (1991). Moreover, the asserting party’s burden is not met if the evidence proffered is “in conflict or otherwise inconclusive.” *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989). Any lack of evidence is construed against the party asserting supervisory status. *Elmhurst Extended Care Facilities, Inc.*, 329 NLRB 535, 536 fn. 8 (1999).

2. Neither Cognizant nor Google could meet their burden to show that the SMEs possess any one of the twelve indicia listed in Section 2(11) or can recommend the same.

Of the twelve indicia, there was no testimony or evidence put forth by either employer that any SME is involved in the decisions to hire, transfer, suspend, layoff, recall, promote, discharge, reward, discipline, direct, or adjust the grievances of any MCO employee or recommend any such action. Thus, these criteria cannot establish the basis for determining that SMEs are supervisors under the Act—and to the contrary, suggest that SMEs *lack* any authority concerning those indicia. *See Michigan Masonic Home*, 332 NLRB 1409, 1410 (2000) (concluding that the absence of any evidence that any authority was exercised with respect to the twelve indicia probative that such authority does not exist).

The only indicia on which *any* evidence was offered concerned the SME's ability to assign tasks or give direction. Both, however, fail to rise to the level of conferring supervisory status because (1) any instruction or direction given by an SME is minor; and (2) SMEs cannot hold anyone accountable for failing to follow their assigned tasks or direction.

First, as explained in *Chicago Metallic Corp.*, 237 NLRB 1677, 1689 (1985), the ability to give "some instructions or minor orders to other employees" does not confer supervisory status. Indeed, "an employee does not become a supervisor merely because he gives some instruction or minor orders to others. Nor does an employee become a supervisory because he has greater skills and job responsibilities or more difficult duties than fellow employees." *Id.*

Here, SMEs are responsible for dividing some work tasks at the outset of the workweek, but so too are Generalists. Indeed, several witnesses testified that, at bottom, *any* employee on the workflow could take on tasks through the Google systems at his or her discretion. *See, e.g.*, Tr. at 197 ("The Agents go in there, and they just start working. Nothing is assigned to them. It is just a big open queue of work, and they can go in and take—pick what tasks they want to work on."), 198 ("We just evenly distribute it amongst the number of Agents that we have available, and then after the first 1,400 are completed, they just go in and assign more to themselves."); 229 ("Music Generalists can take work from another Agent and reassign it to themselves."); 408 (describing assignment of work for Generalists as "[t]here's a queue ready for them, and it's like first come/first served. They just work through it in chronological order"). As such, while SMEs may be a starting point to dividing work, they are not the end point—Generalists, at the end of the day, possess the same "assignment" responsibilities as their SME counterpart. Any assignment made by the SMEs, moreover, is simply to ascertain all work for the respective workflow and is not made with regard to any independent judgment, rather the assignments are generally evenly

distributed among available employees (or redistributed). Tr. at 198 (emphasizing even distribution of workflow); 200 (describing assignment as “round-robin” style); 229 (describing reassignment process).

Likewise, SMEs do not issue any instruction concerning work tasks. While SMEs may initially train Generalists, they are strictly beholden to the instructions and training materials of Google—not their own independent judgment—rendering any direction or instruction they give minor. After that point, SMEs do not issue any instruction to Generalists, aside from occasional interaction over troubleshooting—which often has to be escalated to a Google FTE. Further, SMEs’ “quality assessment” of Generalists’ work does not constitute instruction or direction. Any quality assessment performed by SMEs is according to a rubric co-determined by the SMEs’ employers. In other words, they do not make any independent decisions concerning the work completed by Generalists—they simply apply the instruction from Google.

Second, SMEs do not have the requisite authority to enforce any orders with respect to any of the indicia to rise to the level of supervisory status. In order for the employee to be “responsible” for the indicia—to confer supervisory status—“the person directing and performing the oversight of the employee must be accountable for the performance of the task by the other, such that some adverse consequence may befall the one providing oversight (the alleged supervisor) if the task performed by the employee are not performed properly.” *Oakwood Healthcare*, 348 NLRB 686, 692 (2006). In other words, it must be shown that both the employer delegated to the putative supervisor the authority to direct the work *and* gave that supervisor the authority to take corrective action if necessary. *See id.* “It must also be shown that there is a prospect of adverse consequences for the putative supervisor if he/she does not take these steps.” *Id.*

Here, no such consequences would ripen for SMEs if Generalists failed to properly do their jobs. The circumstances surrounding a Generalist who *did* fail to achieve the requisite quality-accuracy and speed are instructive on this point. *See* U. Ex. 42. In that circumstance, an employee was placed on a performance improvement plan for failing to achieve those goals. At no point—and no testimony was presented to suggest otherwise—however, was a corresponding SME similarly disciplined or held accountable for the work that was not completed. Tellingly, no SME was consulted on possible performance issues or in the event that a task is incomplete—and indeed, SMEs, in general, play no role in advising on team performance. Rather, that falls within the province of the Team Leads, and the Team Leads to police as necessary. At the end of the day, SMEs are only accountable for their own work—and no one else’s—defeating any possibility that they fall within the meaning of “supervisor” under the Act.

B. The Petitioned-For Unit of Generalists and SMEs is an Appropriate Unit.

1. Legal Standard

In examining the appropriateness of a petitioned-for bargaining unit, the Board “consider[s] only whether the unit requested is an appropriate one, even though it may not be the optimum or most appropriate unit for collective bargaining.” *Overnite Transp. Co.*, 322 NLRB 723, 723 (1996). As the Board recently instructed, the starting point for determining whether a unit is appropriate focuses on whether the petitioned-for unit shares a “community of interest.”¹⁷ *American Steel Constr., Inc.*, 327 NLRB No. 23, slip op. at 2 (Dec. 15, 2022).

¹⁷ On December 14, 2022, the Board issued its decision in this matter, overruling the standard set forth in *PCC Structural, Inc.*, 365 NLRB No. 160 (2017), and reinstating the standard articulated in *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934 (2011). In its decision, the Board specified that the *Specialty Healthcare* standard reinstated by *American Steel Construction* shall be applied “retroactively to all pending cases.” 365 NLRB No. 160 at 14. Accordingly, that new standard governs this matter.

The Board has historically considered the following factors under its traditional community-of-interest test:

[W]hether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer's other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised.

Specialty Healthcare, 357 NLRB 934 at 942 (quoting *United Operations, Inc.*, 338 NLRB 123, 123 (2002)). Nevertheless, “[e]mployer-wide and plantwide units are presumptively appropriate under the Act, and will be approved unless the contesting party can rebut the presumption.” *Id.* at 3.

Although, here, no challenges have been raised that the smallest appropriate unit contains employees not in the petitioned-for unit, in the circumstance, the Board applies the traditional standard by assessing: 1) “whether the employees in the petitioned-for unit share a community of interest (i.e., whether the unit is “homogenous”); 2) whether the petitioned-for unit is ‘readily identifiable’ as a group (i.e., “identifiable”) based on ‘job classifications, departments, functions work locations, skills, or similar factors;’ and 3) whether the petitioned-for unit is ‘sufficiently distinct.’” *Id.* at 13 (Dec. 15, 2022) (quoting *Specialty Healthcare*, 357 NLRB at 942–45). “[I]f a particular element is not disputed, it need not be adjudicated.” *Id.*

2. The Petitioned-For Unit Shares an Internal Community of Interest.

In this petitioned-for unit, the SMEs and the Generalists are all responsible for operating and fixing issues with the YouTube Music platform. Tr. at 21. Both SMEs and Generalists are supervised by Team Leaders, who are responsible for ensuring that the team standards are met and issuing discipline to the MCO employees when necessary. Tr. at 24–25; Cog. Ex. 10. The entire MCO is overseen by the Project Manager, Priya Ramani. Cog. Ex. 10. All MCO employees are

subject to the same workplace policies, Google-enhanced benefits, and other pay procedures. Tr. at 143. SMEs may have slightly higher wages, but aside from that, SMEs and Generalists share almost all other terms and conditions of employment.

With respect to skills and training, all MCO employees are required to have a college degree U. Ex. 2. All MCO employees are expected to undergo both Cognizant training and Google training—specific to the work tasks. Tr. at 360–61; U. Ex. 23. Thus, all MCO employees share a common core of skills and training. U. Ex. 2. Indeed, the work performed by both jobs is largely two sides of the same coin and in tandem with the other—with Generalists catching errors that SMEs then check over. Tr. at 184. The Generalists and SME positions are also largely interrelated with overlapping responsibilities or one often stepping in to cover the tasks of the other in certain circumstances. *See* Tr. at 162–63, 240 (describing Generalists stepping in to cover for SMEs).

Therefore, the petitioned-for unit shares an internal community of interest sufficiently distinct from the remainder of the Employer’s operations. And this demonstrates that the unit is both homogeneous and identifiable under the *Specialty Healthcare*.

3. The Petitioned-For unit seeks to include the “readily identifiable” group of all MCO employees.

The petitioned-for unit seeks to include the “readily identifiable” group of all MCO employees, which include the Generalists and SMEs, based out of Austin, Texas. *American Steel Constr., Inc.*, 327 NLRB No. 23, slip op. at 13. Moreover, while there is no precedent directed to this industry, plantwide units have long been recognized as presumptively appropriate for bargaining. *See Haag Drug Co.*, 169 NLRB 877, 877 (1968); *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 136 (1962). Here, because all the eligible employees on this project are included in the bargaining unit—akin to a plant or single-location—and no other functional integration

concern exists, the unit is presumptively appropriate. Nothing in the record undermines or rebuts this presumption.

4. There is no concern that the unit need to be “sufficiently distinct.”

This element recognizes “that even if the petitioned-for unit exhibits a mutuality of interests and has some coherent organizing principle, it may nonetheless be inappropriate because it excludes employees who cannot rationally be separated from the petitioned-for unit employees on community-of-interest grounds.” *American Steel Constr., Inc.*, 327 NLRB No. 23, slip op. at 4. The petitioned-for unit does not seek to exclude any employees in this circumstance, nor have Cognizant and Google raised that assertion. Just the opposite, the petitioned-for unit seeks to include the SMEs and the Generalists, which constitute the entirety of the statutorily-covered workforce at this location. And, as underscored above, those two positions share the same internal community of interest.

In sum, the petitioned-for unit shares an internal community of interest and seeks to include the readily identifiable group of all MCO employees. Therefore, the petitioned-for unit is an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

III. The Region should hold a mail ballot election.

Under the present circumstances, holding a manual ballot election would not be appropriate, and the Petitioner submits that a mail ballot election should instead be directed. The Board has delegated its discretion in determining election arrangements to Regional Directors. *San Diego Gas & Electric*, 325 NLRB 1143, 1144 (1998).

At the hearing, Cognizant and Google averred that the petitioned-for unit employees will eventually be moved to and work at a new location at 717 East Parmer Lane in Austin, Texas, and

have requested a manual ballot election be held at that location. However, as referenced throughout the hearing, the MCO employees in the petitioned-for unit are still required to work remotely, and have never set foot in that location.

Further compounding matters, the location is still under construction and is not fully functional. *See* Tr. at 629 (statement from Cognizant counsel: “I honestly don’t know [if the building is usable], but what I am told is, that even if it is not ready for normal operations, we believe it could be safely occupied . . .”). Cognizant cannot even identify a room or location within the building where the election would be conducted, and thus cannot certify that it would be able to comply with the suggested manual election protocols outlined in GC Memo 20-10 to ensure the health and safety of all parties conducting or participating in the election. Given the uncertainty as to whether the building will even be operational at the time of the election, it would be inappropriate to direct ballot election at that location.

In addition, there are a number of employees – as many as 10-15 employees comprising a significant percentage of the petitioned-for unit – that do not reside in the Austin, Texas area, reside in other states, and would be required to travel long distances to get to Austin. Therefore, a manual ballot election would impose a substantial burden on those out of state or area employees and deter voting participation. Regional Directors have long directed mail ballot elections when eligible voters are “scattered” or “geographically distant” within the meaning of the Casehandling Manual and within the guidelines set forth in *San Diego Gas & Electric*, 325 NLRB 1143, 1144 (1998). *See Odebrecht Contractors of Fla., Inc.*, 326 NLRB 33 (1998); NLRB Casehandling Manual (Pt. Two) Representation, Section 11301.2. Because of the long distances some MCO employees would be required to drive or travel for a manual ballot election and the fact that Cognizant’s proposed location is not operational, a mail ballot election is the appropriate method

of election, and the Petitioner respectfully requests that the Regional Director direct a mail ballot election. Tr. at 22 (describing the 717 East Parmer location as not operational).

CONCLUSION

For the foregoing reasons and based on the record as a whole, the Regional Director should find that Cognizant and Google are joint-employers of the petitioned-for unit, that the petitioned-for unit of SMEs and Generalists is appropriate, and order a mail ballot election accordingly.

Dated: December 21, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 21, 2022, the foregoing was filed electronically with the National Labor Relations Board, Region 16, and served via electronic mail to the following:

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